

EXHIBIT B-2

EXHIBIT B-2

<p style="text-align: right;">Page 94</p> <p>1 FUERMAN</p> <p>2 action, and they keep track of their customers</p> <p>3 who have -- who own stock. So they send me</p> <p>4 the notice, so technically I'm a member of</p> <p>5 that plaintiff class when that happens. I</p> <p>6 think they sent me one for 3 COM, for example.</p> <p>7 Q. Have you ever served as a class</p> <p>8 plaintiff?</p> <p>9 A. No.</p> <p>10 Q. Do you consider yourself an expert</p> <p>11 on shareholder behavior?</p> <p>12 A. No.</p> <p>13 Q. Do you consider yourself an expert</p> <p>14 on the public savings and loan market or the</p> <p>15 market for publicly held savings and loans in</p> <p>16 the time frame 1999 to 2000?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. No, in the sense of I don't know the</p> <p>19 I had idiosyncrasies of that market.</p> <p>20 Q. Do you consider yourself an expert</p> <p>21 on calculating damages in connection with</p> <p>22 securities actions or other litigation cases?</p> <p>23 A. No, I do not. In fact, one of my</p> <p>24 papers I co-authored with professor</p> <p>25 Steve Freund who has the knowledge to do that.</p>	<p style="text-align: right;">Page 96</p> <p>1 FUERMAN</p> <p>2 discuss it further to see whether I had the</p> <p>3 proper qualifications and whether I was</p> <p>4 interested.</p> <p>5 So we had several conversations. I</p> <p>6 sent him various documents in the fall of</p> <p>7 2003.</p> <p>8 Q. You've also today provided sort of a</p> <p>9 summary of your time sheets?</p> <p>10 A. That is correct.</p> <p>11 Q. If you need to look at this feel</p> <p>12 free. I'm just trying to get an estimate from</p> <p>13 you for how much time you've devoted to the</p> <p>14 engagement?</p> <p>15 A. I could total up these numbers with</p> <p>16 my calculator, but that seems kind of like a</p> <p>17 waste of time.</p> <p>18 Q. I'm looking for rough order of</p> <p>19 magnitude.</p> <p>20 A. All right. I'm simply counting</p> <p>21 these numbers. I count 185 hours.</p> <p>22 Q. I know that's an approximation.</p> <p>23 A. Yeah, it's all there in black and</p> <p>24 white. If I made a mathematical error that's</p> <p>25 possible.</p>
<p style="text-align: right;">Page 95</p> <p>1 FUERMAN</p> <p>2 He did that in part of my paper, my paper</p> <p>3 included that. He did that because he has</p> <p>4 that knowledge.</p> <p>5 Q. Which paper of the ones you've</p> <p>6 listed?</p> <p>7 A. That's the third one down called</p> <p>8 "Fraudulent Audited Annual Financial</p> <p>9 Statements."</p> <p>10 Q. Third one down on what page?</p> <p>11 A. Third one down on the first page,</p> <p>12 third article listed.</p> <p>13 Q. Thank you. When were you retained</p> <p>14 in this case?</p> <p>15 A. It was in the fall of 2003. Yeah,</p> <p>16 had to have been the fall of 2003.</p> <p>17 Q. 2003 or 2002?</p> <p>18 A. 2003. It was fairly recent.</p> <p>19 Q. Tell me how your engagement came</p> <p>20 about?</p> <p>21 A. I got a cell phone call from</p> <p>22 Mike Brautigam. I returned it and he</p> <p>23 explained why he was calling. He wanted to</p> <p>24 discuss with me the possibility of being an</p> <p>25 expert witness in this case, but we needed to</p>	<p style="text-align: right;">Page 97</p> <p>1 FUERMAN</p> <p>2 Q. That's fine. How much have you been</p> <p>3 paid to date?</p> <p>4 A. About \$27,000.</p> <p>5 Q. What was the nature of the tasks as</p> <p>6 was explained to you by Mr. Brautigam?</p> <p>7 A. The nature of the task -- I cannot</p> <p>8 remember exactly what was discussed in the</p> <p>9 first few phone calls. The tasks varied. At</p> <p>10 first the task was to familiarize myself with</p> <p>11 the case sufficiently so that I could decide</p> <p>12 whether I felt that it was appropriate that I</p> <p>13 be an expert witness.</p> <p>14 And he was doing the same for</p> <p>15 himself, judging my knowledge and credentials</p> <p>16 and seeing whether from his point of view it</p> <p>17 would be appropriate. So some time was spent</p> <p>18 on that, and then we both concluded that it</p> <p>19 would be appropriate.</p> <p>20 Then I began to just read massive</p> <p>21 amounts of litigation documents. The case has</p> <p>22 been going on since 2001. I think it's been</p> <p>23 going on that long.</p> <p>24 Q. Before that, but that's close</p> <p>25 enough.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 FUERMAN</p> <p>2 A. No, you are right. I think I read</p> <p>3 somewhere it actually started with a pleading</p> <p>4 requesting an injunction prior to the merger</p> <p>5 closing or something. So it's been going on</p> <p>6 for quite a while.</p> <p>7 So a fair amount of time was spent</p> <p>8 on reading a fair number of these documents.</p> <p>9 I saw on the PACER docket sheet that there are</p> <p>10 400 docket entries. So I hesitate to say that</p> <p>11 I am familiar with all aspects of such a huge</p> <p>12 case, but to the extent feasible I did just</p> <p>13 that.</p> <p>14 I tried to familiarize myself with</p> <p>15 the case by reading documents filed by the</p> <p>16 parties, as well as a couple judicial opinions</p> <p>17 that have been put on Lexus Nexus. Then I</p> <p>18 began to write the expert opinion. I think I</p> <p>19 gave you a copy of the first draft that was</p> <p>20 completed in December and then the final draft</p> <p>21 was filed with the court January 22, 2004.</p> <p>22 I spent a lot of time doing</p> <p>23 research. First of all, I did initial</p> <p>24 research to determine, yes, I did feel</p> <p>25 comfortable that I am an expert for purposes</p>	<p style="text-align: right;">Page 100</p> <p>1 FUERMAN</p> <p>2 Q. Professor Fuerman, let me show you a</p> <p>3 document which has been marked as Fuerman</p> <p>4 Deposition Exhibit 2. This is entitled</p> <p>5 "Exhibit 3 Accounting Expert</p> <p>6 Report-Materiality."</p> <p>7 In your prior testimony you were</p> <p>8 talking about something you prepared in</p> <p>9 January of '04. Is this the document?</p> <p>10 A. Right. I gave you an early draft, I</p> <p>11 think December the 3, 2003 or something along</p> <p>12 those lines. I believe this was filed with</p> <p>13 the court January 2, 2004.</p> <p>14 Q. In this document it was not signed</p> <p>15 or dated. Do you know why that was?</p> <p>16 A. No, I do not know.</p> <p>17 Q. You talked about being asked to</p> <p>18 provide assistance in connection with</p> <p>19 depositions. Do you recall which depositions?</p> <p>20 A. One of them is the Joseph Stager</p> <p>21 deposition, and I gave you a copy of a memo</p> <p>22 that I wrote to Mike, my thoughts on that</p> <p>23 deposition.</p> <p>24 Q. Did you meet personally with</p> <p>25 Mr. Brautigam over the course of your duties?</p>
<p style="text-align: right;">Page 99</p> <p>1 FUERMAN</p> <p>2 of what I'm being asked to testify on. But</p> <p>3 then I read everything I could get my hands on</p> <p>4 that would shed light on the matters in</p> <p>5 controversy regarding materiality and</p> <p>6 restatements and the nexus between them.</p> <p>7 Q. You indicated that from time to time</p> <p>8 the tasks changed or shifted a little bit?</p> <p>9 A. That is correct.</p> <p>10 Q. Can you explain that?</p> <p>11 A. At one point the task was mainly to</p> <p>12 write that initial expert report or expert</p> <p>13 opinion, however you wish to phrase it, that</p> <p>14 was filed January 22, 2004. There were other</p> <p>15 times when I was asked to assist counsel for</p> <p>16 the plaintiffs in writing up a pleading,</p> <p>17 something that might get incorporated in a</p> <p>18 pleading and other times my view on a</p> <p>19 deposition transcript or my view on an</p> <p>20 upcoming deposition or something like that.</p> <p>21 MR. BURKE: Off the record for one</p> <p>22 second.</p> <p>23 (Discussion off the record.)</p> <p>24 (Fuerman Exhibit 2, document, marked</p> <p>25 for identification, as of this date.)</p>	<p style="text-align: right;">Page 101</p> <p>1 FUERMAN</p> <p>2 A. Last night was the first time.</p> <p>3 Q. Most of your dealings were</p> <p>4 correspondence?</p> <p>5 A. By telephone, correspondence, fax.</p> <p>6 Q. In connection with your duties, did</p> <p>7 you meet with anyone else associated with the</p> <p>8 case personally?</p> <p>9 A. No. I do not know the parties</p> <p>10 involved, other than Dr. Stager. He was the</p> <p>11 president of the university when I was going</p> <p>12 through the Ph.D. program at Cincinnati.</p> <p>13 Q. Do you know him personally?</p> <p>14 A. I do not even know what he looks</p> <p>15 like.</p> <p>16 Q. You just know of him?</p> <p>17 A. That is correct.</p> <p>18 Q. Did you ever meet Mr. Mesh?</p> <p>19 A. No, I have not met Mr. Mesh.</p> <p>20 Q. Prior to this case have you ever</p> <p>21 done any work for Mr. Mesh of the Mesh firm?</p> <p>22 A. No, I have not.</p> <p>23 Q. Prior to this case have you ever</p> <p>24 done any work for Mr. Brautigam of any kind?</p> <p>25 A. No, I have not.</p>

26 (Pages 98 to 101)

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1 FUERMAN

2 Q. Did Mr. Brautigam tell you how he

3 came to learn of you?

4 A. He saw my article in Business Week.

5 Q. That's the one you gave me earlier

6 today about auditing the auditors?

7 A. Yes.

8 Q. Was there any analysis that you

9 performed for purposes of your expert report

10 that's not included in the three reports that

11 you have submitted?

12 A. No.

13 Q. Is there any work that you were

14 asked to do that you did not do?

15 A. No.

16 Q. Mr. Brautigam is pointing you

17 towards something?

18 A. I'm sorry, I'm contradicting myself.

19 I have prepared one thing here and I brought

20 this to the deposition. I showed this to you

21 perhaps two hours ago.

22 Q. Right.

23 A. It's just two pages long. I

24 prepared this especially for the deposition

25 because I anticipated it would be something

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1 FUERMAN

2 that would be discussed.

3 MR. BRAUTIGAM: Can we mark this as

4 an exhibit.

5 MR. BURKE: Sure. Let's make this

6 Fuerman Deposition Exhibit 3.

7 (Fuerman Exhibit 3, document, marked

8 for identification, as of this date.)

9 Q. Tell me if you would,

10 Professor Fuerman, what Fuerman Deposition

11 Exhibit 3 is?

12 MR. BURKE: For the record, this is

13 two pages. The first page is a page

14 selected from 75 or an excerpt from page

15 75 of the PFGI 10K, filed March 29, 2000.

16 Q. The second page is a document you

17 prepared yourself?

18 A. It is a document I prepared myself.

19 I prepared this because I assumed that I would

20 be asked questions about the Prowse report,

21 another expert witness in this case. I have a

22 response to Expert Witness Prowse's assertion

23 that I made an error in my analysis.

24 I believe that Mr. Prowse is the one

25 who made an error, and I thought about it and

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1 FUERMAN

2 I thought this is a little bit complicated, a

3 little bit technical and I need to create

4 something to be able to demonstrate this in

5 the deposition.

6 Q. We will get into that later and

7 we'll talk about that at that point in time.

8 Is this project still ongoing?

9 A. This, oh, it was done in an

10 afternoon, that's all.

11 Q. It's not reflected in your report,

12 but this work is done?

13 A. Right. This is in reaction to my

14 receipt of the Prowse report, which I received

15 sometime after I completed my report.

16 Q. And this deals with future earnings,

17 is that correct, projected future earnings?

18 A. Is it Dr. Prowse or Mr. Prowse?

19 Q. It's doctor.

20 A. Dr. Prowse asserts that I made an

21 error, that I used the wrong earnings per

22 share numbers in one part of my expert report.

23 He feels that I should have used, so far as

24 earnings per share reported for 1998, I should

25 have used \$2.56. I believe Mr. Prowse is

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1 FUERMAN

2 incorrect.

3 I used the correct \$2.48. I can get

4 into explaining that when we get to the Prowse

5 report.

6 Q. That's fine. We'll talk about that.

7 I understand also that you are going to be

8 reviewing depositions as we move forward?

9 A. That's correct.

10 Q. Other than reviewing depositions or

11 other documents created as we move forward,

12 are you performing any other analytical work

13 in connection with your expert testimony?

14 A. No, but you could regard what I did

15 here as sort of an antilytic work. Something

16 at a deposition may strike me as requiring

17 some kind of antilytic response on my part,

18 but unless that happens, no, there would be no

19 further antilytic work.

20 Q. I understand there may be things

21 that come up. I understand Fuerman Deposition

22 Exhibit 3. Other than that there's no

23 projects that you are working on currently?

24 A. No.

25 Q. How many, if any, individuals

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1 FUERMAN

2 assisted you in this project, in connection

3 with your expert report?

4 A. The only assistance I got was from

5 my graduate assistant, who helped me gather

6 copies of articles that were cited in my

7 reports, that I gave you a copy of first thing

8 this morning. No substantive work has been

9 done on this by anybody other than me.

10 Q. I take it you never prepared an

11 expert report prior to this case?

12 A. That is correct. And that may

13 explain why the initial one that I wrote in

14 December 2003 and filed in January 2004 may

15 vary with the format that you typically

16 expect.

17 Q. You did review the drafts of your

18 reports with Mr. Brautigam?

19 A. Yes.

20 Q. Did he suggest changes to you?

21 A. Sometimes, yes.

22 Q. Did you make those changes?

23 A. Sometimes, yes, sometimes, no.

24 Q. Do you recall any changes that

25 Mr. Brautigam asked you to make that you

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1 FUERMAN

2 elected not to make specifically?

3 A. Usually they were clerical typo

4 changes. Or sometimes he would perceive that

5 I made a clerical or typo error or spelling

6 error, syntax error and sometimes I would

7 disagree with him. So there were sometimes

8 those back and forth.

9 It's my philosophy that you want to

10 be, in any kind of report, whether it's an

11 academe or in a law court, you want to be

12 sufficiently long enough to cover the subject,

13 but you don't want it to be so long a

14 disburdenment of the people trying to read it.

15 Sometimes we may have had a difference of

16 opinion on what length the document should

17 have.

18 I'm trying to think what else.

19 There was one situation on the expert report

20 where there was the belief, and I thought it

21 was a mistake in belief, that I had made an

22 error on a certain point. So I discussed it

23 with Mike and he agreed with my view, that

24 there was no error.

25 Q. Do you have your report still in

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1 FUERMAN

2 front of you?

3 A. Yes, I do. The one dated August the

4 8th?

5 Q. Yes, sir. I think we talked about

6 this off the record, I'll make sure it's on

7 the record.

8 You have prepared Fuerman Deposition

9 Exhibit 2, which we talked about?

10 A. That is correct.

11 MR. BURKE: Mark that as 4.

12 (Fuerman Exhibit 4, document, marked

13 for identification, as of this date.)

14 Q. Take a look at what we've now

15 correctly marked as Fuerman Deposition

16 Exhibit 4. Can you identify the substituted

17 Fuerman Exhibit 4?

18 A. Yes. This is the document that was

19 filed with the court March 5, 2004. It was

20 the second document I wrote for this case that

21 got filed with the court.

22 Q. What were the circumstances under

23 which you prepared Fuerman Deposition

24 Exhibit 4?

25 A. The circumstances were that first I

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1 FUERMAN

2 submitted an expert report January 22, 2004.

3 Sometime after that Dr. Tabin Tuzin submitted

4 a document that there's been some confusion

5 about, but appeared to attempt to rebut my

6 report. So this is in rebuttal to Dr. Tuzin's

7 document.

8 Q. Then subsequently on August 8, 2004

9 you submitted Plaintiffs' Exhibit 115,

10 correct, which is in front of you?

11 A. August.

12 Q. August 8, 2004?

13 A. Yes, but that wasn't filed with the

14 court I don't believe, or was it.

15 Q. But that's the latest report you've

16 done?

17 A. That's the latest report I've done.

18 Q. Am I correct that Plaintiffs' 115

19 sets forth sort of the updated report and

20 opinions that you are prepared to give in this

21 case?

22 A. That is correct. I feel that it's a

23 standalone document. It's the result of

24 additional, many hours of further research,

25 writing and reflection during the summer on

28 (Pages 106 to 109)

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1 FUERMAN

2 this case.

3 Q. On page 2 of Plaintiffs' Exhibit

4 115, of your report, there's a list of

5 materials and documents that you looked at.

6 A. I'm sorry. Are we on?

7 Q. Exhibit 115

8 A. Page 2.

9 Q. Roman Numeral two.

10 A. Yes, I'm with you.

11 Q. Is there a list of everything you

12 reviewed for purposes of your testimony in

13 this case?

14 MR. BRAUTIGAM: Objection. At what

15 point?

16 MR. BURKE: At the point he wrote

17 this report.

18 MR. BRAUTIGAM: Okay, because as we

19 indicated, he reviewed Carey's testimony

20 last night.

21 Q. We understand it's a standing

22 clarification, Professor Fuerman, that there

23 are some additional things that you are

24 looking at or have looked at?

25 A. That's correct.

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1 FUERMAN

2 Q. You looked at Mr. Carey's

3 deposition, you looked at Dr. Prowse's report,

4 some other things that your counsel will

5 advise me in a more exhaustive list, of what

6 you've looked at in addition to what's listed

7 here.

8 My question is, as and at the time

9 you prepared Plaintiffs' Exhibit 115, does

10 page 2 of your report list the materials that

11 you looked at?

12 A. There's much more that I looked at

13 than this. For example, the accounting and

14 auditing literature, I don't think I mention

15 that in this list. So far as pleadings in

16 this case, I think this list captures all of

17 them to that point, and deposition

18 transcripts, that kind of thing I think I may

19 have inadvertently omitted one or two things.

20 Q. At least as you look at it, this is

21 a fair representation of the pleadings and the

22 deposition transcripts and PFGI OHSL documents

23 that you looked at specifically?

24 A. That is correct. I can't remember

25 when I wrote this exactly, but I'm not sure

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1 FUERMAN

2 why I did not list that I read the various

3 accounting and auditing standards. Maybe I

4 didn't feel it was necessary.

5 Q. I understand. Who selected these

6 materials for you to review?

7 A. They were sent to me by

8 Mike Brautigam, but we discussed on the phone

9 what documents I logically ought to look at.

10 I think I informed him my views and I think

11 there was no difference of opinion that

12 logically members of the audit committee,

13 members of the senior executives of the

14 company, those were important transcripts to

15 read.

16 Q. Did you ever ask for additional

17 materials from Mr. Brautigam in addition to

18 those that are listed here?

19 A. No, I don't think so.

20 Q. Did you ever go on the PACER system

21 and pull other pleadings on your own?

22 A. Yes. What I did early in the case,

23 there was a judicial opinion and I found it on

24 PACER. I can't remember if it's the former

25 judge of this case or perhaps Judge Siegel.

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1 FUERMAN

2 Isn't Judge Siegel the judge on another

3 Providence cases?

4 Q. Spiegel, right.

5 A. There was an additional opinion

6 perhaps by Judge Spiegel that just discussed

7 the case and what had been happening for the

8 last couple of years. I read through that

9 carefully and it gave me just a sense of what

10 was happening. I may have read a couple other

11 documents.

12 Q. Do you recall what those are as you

13 sit here today?

14 A. I remember in one of the pleadings

15 by the defendants there was something in an

16 attempt to rebut me about a case in Nebraska

17 or something. I think I may have pulled that

18 up and look at it, and I may have looked at

19 some other cases around that time. My general

20 -- I can't remember the names of these cases,

21 I don't know if I have a list of them even --

22 but my general impression was, as had been my

23 understanding, that it's rare to find this

24 issue discussed in Lexus Nexus because

25 typically if financial statements are

<p style="text-align: right;">Page 114</p> <p>1 FUERMAN</p> <p>2 subsequently restated, the defense stipulates</p> <p>3 that the originally issued financial</p> <p>4 statements were materially misstate.</p> <p>5 Q. Have you ever worked on the defense</p> <p>6 of a securities class action involving a</p> <p>7 restatement?</p> <p>8 MR. BRAUTIGAM: Objection, asked and</p> <p>9 answered.</p> <p>10 A. I have not worked on the defense of</p> <p>11 a securities class action. I've worked on the</p> <p>12 defense of direct actions when I was at the</p> <p>13 small firm in Ohio.</p> <p>14 Q. Can you cite me to any cases in</p> <p>15 which the defense, in your phrase, stipulated</p> <p>16 to whatever the stipulation was that you just</p> <p>17 described?</p> <p>18 MR. BRAUTIGAM: Objection to the</p> <p>19 form.</p> <p>20 A. I can't cite a case, but in the</p> <p>21 course of my research I speak with many</p> <p>22 securities attorneys, both on plaintiffs side</p> <p>23 and the defense side. They informed me that</p> <p>24 it's highly unusual for defense attorneys to</p> <p>25 not agree to stipulate on this issue.</p>	<p style="text-align: right;">Page 116</p> <p>1 FUERMAN</p> <p>2 it's just very unusual, the posture the</p> <p>3 defendants are taking in this case, with</p> <p>4 regard to the issue of whether the originally</p> <p>5 issued financial statements were materially</p> <p>6 misstated when subsequently they were</p> <p>7 restated.</p> <p>8 Q. Who has told you that, what</p> <p>9 securities practitioners are you referring to</p> <p>10 specifically?</p> <p>11 A. I've been most recently I was told</p> <p>12 that by -- first of all, I don't know that I</p> <p>13 should answer because perhaps I might be</p> <p>14 betraying a confidence having been advised</p> <p>15 this by.</p> <p>16 Q. Is this part of your opinion, that</p> <p>17 securities practitioners tell you this ought</p> <p>18 to be stipulated to? It's in your opinion.</p> <p>19 A. It is.</p> <p>20 Q. If this is one of your opinions I</p> <p>21 want to know what the basis of it is?</p> <p>22 A. I'll tell you the person who told me</p> <p>23 this was an attorney at Berman DeValerio.</p> <p>24 Q. What's the name of the attorney?</p> <p>25 A. Michael Mitrea.</p>
<p style="text-align: right;">Page 115</p> <p>1 FUERMAN</p> <p>2 That's why it doesn't show up on</p> <p>3 Lexus Nexus because it doesn't get litigated.</p> <p>4 Q. But you do agree with me that the</p> <p>5 issue you are talking about of materiality of</p> <p>6 restatements does not appear in Lexus Nexus,</p> <p>7 at least in your research; is that right?</p> <p>8 MR. BRAUTIGAM: Objection.</p> <p>9 A. I agree it does not appear, but the</p> <p>10 reason it does not appear is because it's</p> <p>11 stipulated. Only things that are litigated</p> <p>12 appear in Lexus Nexus.</p> <p>13 Q. Your understanding is the only</p> <p>14 things that ever appear in Lexus Nexus are</p> <p>15 things that get litigated?</p> <p>16 A. In judicial opinions.</p> <p>17 Q. Would that involve motions?</p> <p>18 A. Judges are called to decide disputes</p> <p>19 among the litigants as to what are the</p> <p>20 relevant facts, well actually that's the trier</p> <p>21 of fact that does that mainly, but to decide</p> <p>22 what's the relevant law. If there were</p> <p>23 something that was very often in dispute I</p> <p>24 would expect to find it in Lexus Nexus.</p> <p>25 Various attorneys have told me that</p>	<p style="text-align: right;">Page 117</p> <p>1 FUERMAN</p> <p>2 Q. Is he a Plaintiffs' counsel?</p> <p>3 A. He is a Plaintiffs' counsel.</p> <p>4 Q. Did he give you the names of any</p> <p>5 cases in which materiality was stipulated in</p> <p>6 the context of a restatement?</p> <p>7 A. I didn't ask him for the names of</p> <p>8 cases.</p> <p>9 Q. Anybody other than Mr. Mitrea tell</p> <p>10 you that?</p> <p>11 A. I've heard this from other people.</p> <p>12 I can't remember their names, but I remember</p> <p>13 hearing this also from a person who has served</p> <p>14 as an expert witness.</p> <p>15 Q. Which expert witness, I'm sorry?</p> <p>16 A. He is with the McGladrey and Poland</p> <p>17 C.P.A. firm.</p> <p>18 Q. Where are they based?</p> <p>19 A. I think they may be headquartered in</p> <p>20 Minnesota, but they are all over the country.</p> <p>21 He's in the Boston area, and he told me that</p> <p>22 this is highly unusual in his experience, and</p> <p>23 he's been involved in many litigations for</p> <p>24 defense to not go ahead and stipulate that</p> <p>25 materially -- that the originally issued</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 FUERMAN</p> <p>2 financials were materially misstated and</p> <p>3 subsequently they are restated.</p> <p>4 Q. Did he give you any examples of</p> <p>5 cases, specific cases where this stipulation</p> <p>6 supposedly occurred?</p> <p>7 A. No, he did not.</p> <p>8 Q. Anyone else that you can think of</p> <p>9 other than those two individuals?</p> <p>10 A. At this point I cannot think of</p> <p>11 another person.</p> <p>12 Q. You know what a "motion for summary</p> <p>13 judgment" is?</p> <p>14 A. Yes.</p> <p>15 Q. You are aware that from time to time</p> <p>16 motions for summary judgment, whether they are</p> <p>17 granted or denied, are reported in Lexus</p> <p>18 Nexus?</p> <p>19 A. Sometimes, yes.</p> <p>20 Q. Are you aware or did your research</p> <p>21 reveal any summary judgment decision involving</p> <p>22 the kind of stipulation regarding materiality</p> <p>23 that you've testified to?</p> <p>24 A. I've never seen any discussion of</p> <p>25 the matter being stipulated among counsel, but</p>	<p style="text-align: right;">Page 120</p> <p>1 FUERMAN</p> <p>2 I just cannot remember a single</p> <p>3 judicial opinion that clearly said this, well,</p> <p>4 at one point it may have been disputed between</p> <p>5 the parties, but now they've stipulated as to</p> <p>6 it. I can't think of a single judicial</p> <p>7 opinion like that, but I'm here as an</p> <p>8 accounting expert.</p> <p>9 Q. I understand. My question though</p> <p>10 is, you did undertake a search in Lexus Nexus</p> <p>11 for whether or not a restatement evolved into</p> <p>12 a stipulation among the parties as to the</p> <p>13 materiality of the misstated financials; is</p> <p>14 that correct?</p> <p>15 A. I did a search in Lexus Nexus to see</p> <p>16 if there were other cases like this cited case</p> <p>17 in Nebraska, whether it was a complete</p> <p>18 anomaly. From my research it appeared to be a</p> <p>19 complete anomaly.</p> <p>20 Q. That's one decided case that does</p> <p>21 deal with this issue, right?</p> <p>22 A. I believe it's in the Eighth</p> <p>23 Circuit.</p> <p>24 Q. It goes the other way from what your</p> <p>25 testimony is; is that correct?</p>
<p style="text-align: right;">Page 119</p> <p>1 FUERMAN</p> <p>2 I would add that I can't remember seeing any</p> <p>3 other judicial opinion that had any other</p> <p>4 matter stipulated among counsel discussed in</p> <p>5 the decision. I mean typically that's just</p> <p>6 not something you would find in any judicial</p> <p>7 opinion.</p> <p>8 Q. Stipulations do not appear?</p> <p>9 A. Stipulations among counsel. I</p> <p>10 cannot recall sitting here today of a</p> <p>11 stipulation among counsel being discussed in</p> <p>12 any judicial opinion.</p> <p>13 Q. You've never seen a judicial</p> <p>14 opinion, for example, summary judgment saying</p> <p>15 a certain fact is not contested or not</p> <p>16 disputed between the parties or the parties</p> <p>17 agree on a certain fact; is that your</p> <p>18 testimony?</p> <p>19 A. Usually it's phrased like the</p> <p>20 essential facts are not in dispute, they will</p> <p>21 go and talk, but it's not made clear whether</p> <p>22 the parties have stipulated to this or this is</p> <p>23 the judge's belief, that these are the</p> <p>24 relevant facts despite what the counsel have</p> <p>25 said to each other.</p>	<p style="text-align: right;">Page 121</p> <p>1 FUERMAN</p> <p>2 A. No. I believe, again, that I don't</p> <p>3 know it's even proper for me to opine on this,</p> <p>4 but if I recall the judge may have been</p> <p>5 chastising -- the context was the judge may</p> <p>6 have been chastising plaintiffs for saying</p> <p>7 that these financials are per se misstated</p> <p>8 because there is a restatement. She or he, I</p> <p>9 can't remember if it was a male or female</p> <p>10 judge, said something along the lines of I'm</p> <p>11 the judge and I'll decide what the facts are</p> <p>12 here.</p> <p>13 I believe that that case, though it</p> <p>14 was cited by defendants, really is not</p> <p>15 terribly meaningful in this case.</p> <p>16 Q. But, of course, you are not opining</p> <p>17 as a lawyer are you?</p> <p>18 A. But you've been asking my opinion on</p> <p>19 this repeatedly.</p> <p>20 Q. I understand and I think some of</p> <p>21 that does filter into your report, which is</p> <p>22 how we sort of got to where we are?</p> <p>23 A. Some of what filters in my report.</p> <p>24 Q. We deal specifically with that.</p> <p>25 Let's get back to the data upon which you</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 FUERMAN</p> <p>2 reviewed, which is where I think we took this</p> <p>3 sort of detour. Other than the materials you</p> <p>4 gave me that you looked at independently and</p> <p>5 the accounting literature, this does indicate</p> <p>6 on Plaintiffs' 2, of Exhibit 115, this does</p> <p>7 generally indicate the materials that</p> <p>8 Mr. Brautigam sent you to review?</p> <p>9 A. That is correct.</p> <p>10 Q. Following his discussions with you?</p> <p>11 A. Correct.</p> <p>12 Q. You never reviewed the depositions</p> <p>13 of any of the class plaintiffs in this case,</p> <p>14 correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Is there a reason why you decided</p> <p>17 that was not relevant?</p> <p>18 A. I didn't know that such depositions</p> <p>19 were taken.</p> <p>20 Q. And Mr. Brautigam didn't mention</p> <p>21 that to you?</p> <p>22 A. No, he did not. I don't know that</p> <p>23 that would be something that I would want to</p> <p>24 study though. I'd have to think about whether</p> <p>25 that's important. My initial reaction is I</p>	<p style="text-align: right;">Page 124</p> <p>1 FUERMAN</p> <p>2 read everything I can get my hands on and form</p> <p>3 an opinion on materiality or restatement or</p> <p>4 nexus between the two.</p> <p>5 Q. What is your understanding of the</p> <p>6 current status of the Thiemann litigation on</p> <p>7 which you are providing this testimony if you</p> <p>8 have one?</p> <p>9 MR. BRAUTIGAM: Objection.</p> <p>10 A. I'm confused by your question.</p> <p>11 Q. Is it a class action or not?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. I believe it's a class action, but</p> <p>14 maybe it's a direct action. I have not even</p> <p>15 paid attention to that to be honest.</p> <p>16 Q. Have you ever seen an order from</p> <p>17 Judge Beckwith decertifying the class?</p> <p>18 A. Again, I have not focused on that</p> <p>19 procedural aspect of the case. Although those</p> <p>20 are important questions it's not stuff that I</p> <p>21 have focused my attention on.</p> <p>22 Q. So at least as you sit here today</p> <p>23 you don't know if this is a class action or</p> <p>24 not a class action?</p> <p>25 MR. BRAUTIGAM: Objection to the</p>
<p style="text-align: right;">Page 123</p> <p>1 FUERMAN</p> <p>2 don't think it would have been important.</p> <p>3 Q. If two of the class plaintiffs</p> <p>4 testified they never looked at any of the</p> <p>5 financial information in the proxy statement,</p> <p>6 would that be relevant to you?</p> <p>7 A. Are you asking my opinion of</p> <p>8 interpreting the securities laws or as an</p> <p>9 accounting expert? Because it's well know the</p> <p>10 fraud on the market theory says it's not</p> <p>11 terribly important whether they looked at</p> <p>12 those.</p> <p>13 Q. Do you believe the fraud of the</p> <p>14 market theory is still viable in this case, do</p> <p>15 you know?</p> <p>16 A. I'm gasping for breath at being</p> <p>17 asked legal questions. I don't --</p> <p>18 Q. My question is a real simple one.</p> <p>19 You just talked about fraud in the market. My</p> <p>20 question is, do you know whether given the</p> <p>21 current state of this case whether that's a</p> <p>22 viable theory in this case, as things now</p> <p>23 stand?</p> <p>24 A. I have not investigated that issue</p> <p>25 at all. I have been engaged to investigate,</p>	<p style="text-align: right;">Page 125</p> <p>1 FUERMAN</p> <p>2 form. I think you mean whether or not</p> <p>3 it's certified as a class action at this</p> <p>4 point in time.</p> <p>5 MR. BURKE: I'll stand corrected</p> <p>6 with that.</p> <p>7 A. That's a good question. I don't</p> <p>8 know. I assume, again, I only have so many</p> <p>9 hours in the day.</p> <p>10 I have not investigated this, but I</p> <p>11 assume that the plaintiffs must have withstood</p> <p>12 the motion to dismiss or we wouldn't be going</p> <p>13 through depositions. But maybe I'm incorrect</p> <p>14 on that. I don't know.</p> <p>15 Q. Did you ever see the original, the</p> <p>16 decision on the original complaint, granting</p> <p>17 in part and denying in part the motion to</p> <p>18 dismiss that Judge Beckwith originally filed</p> <p>19 in this case?</p> <p>20 A. I may have. The only opinion that I</p> <p>21 really remember fairly well is one, and I</p> <p>22 can't remember if it was by Judge Beckwith or</p> <p>23 Judge Spiegel, that discussed how the case had</p> <p>24 been going for the last two years and a</p> <p>25 decision to consolidate together a few cases,</p>

32 (Pages 122 to 125)

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2 it might have been by Judge Beckwith, because

3 of judicial efficiency. This was to bring

4 myself up to speed on what happened, but I

5 don't know the answer to your question.

6 Q. You talk about some PFGI minutes

7 among the documents that you looked at.

8 A. That's correct.

9 Q. That's on page 2 of your report.

10 Did you ever read any OHSL board minutes?

11 A. I think I did. I think I did, but I

12 didn't spend a lot of time on them. I know

13 that those are very important to -- let me

14 back up and explain myself.

15 My understanding of the general

16 theme of this case, you asked me maybe ten

17 minutes ago my understanding, is it began as

18 an allegation of breach of fiduciary duty,

19 with regard to the merger of OHSL into to

20 Provident. But later it evolved into also

21 having an accounting aspect to it, that's

22 where I got brought in.

23 I have minimally familiarized myself

24 with anything other than the accounting

25 aspect, because first of all, that's not my

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2 expertise.

3 Q. To be honest with you, Dr. Fuerman,

4 Professor Fuerman, I'm not trying to do

5 anything today other than make sure I

6 understand where your area of expertise lies,

7 what your focus was and what you are going to

8 testify to, okay. To a certain extent I'm

9 trying to narrow the field and make sure I am

10 understand where you are going.

11 MR. BRAUTIGAM: Objection to the

12 speech.

13 MR. BURKE: That's fine.

14 Q. That's not a question.

15 A. I know that these are serious issues

16 and important issues, and I have maybe a

17 threshold knowledge and understanding of these

18 issues, but I don't hold myself out as an

19 expert in those breach of fiduciary duty

20 issues.

21 Q. You are aware that the accounting

22 issues of which you have opined relate to a

23 restatement analysis by Provident in March,

24 April of 2003, correct?

25 A. Correct.

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1 FUERMAN

2 Q. Are you aware that other than in

3 action other lawsuits have been filed in

4 connection with that restatement?

5 A. Yes, I am.

6 Q. Are you aware of the current status

7 of those actions?

8 A. I believe -- I have a thousand cases

9 in my database and Provident is one of them.

10 I think I probably have noticed a little bit

11 about it. I know Judge Spiegel issued a

12 judicial opinion.

13 I can't recall whether he dismissed

14 completely or dismissed in part claims of the

15 plaintiffs, and I don't know whether those are

16 being appealed. Again, my reading of the

17 various other documents is to learn everything

18 I can that will better my understanding of the

19 accounting matters.

20 Q. You are aware that Judge Spiegel

21 dismissed in one form or another the

22 allegations arising from the restatement

23 itself, are you not?

24 MR. BRAUTIGAM: Objection to the

25 form.

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2 A. Again, I'm not aware of that.

3 Q. You don't recall reviewing that

4 opinion?

5 A. I'm pretty sure I remember reading

6 that opinion, but I can't remember whether he

7 dismissed in whole or in part exactly what

8 claims he dismissed.

9 Q. One of the documents you looked at,

10 item B on page 2, is the consolidated amended

11 class action complaint; am I correct?

12 A. That's right.

13 Q. Did you ever review any of the

14 motions to dismiss that were filed by the

15 defendants in response to that?

16 A. No, I did not.

17 Q. Is there a reason why you never

18 thought it appropriate to look at the defense

19 version of this case?

20 MR. BRAUTIGAM: Objection.

21 A. I felt that I got a sufficient

22 understanding of the defenses position by

23 reading the transcripts of the defendants, and

24 in conjunction with your objections you made

25 at these depositions at key points. I felt

<p style="text-align: right;">Page 130</p> <p>1 FUERMAN</p> <p>2 that, plus the expert reports of Dr. Prowse</p> <p>3 and, if we call it an expert report of</p> <p>4 Dr. Tuzin, that was what I needed to know.</p> <p>5 There are 400 docket entries for this case,</p> <p>6 that's a lot of stuff to go through. My</p> <p>7 feeling was if I attempted to plow through too</p> <p>8 much of this I would not get a good grasp of</p> <p>9 the issues tightly related to materiality and</p> <p>10 restatements.</p> <p>11 Q. But at least as you sit here today</p> <p>12 you have no understanding of the legal</p> <p>13 theories and the legal defenses asserted by</p> <p>14 the defendants with respect to the</p> <p>15 consolidated amended class action complaint?</p> <p>16 MR. BRAUTIGAM: Objection.</p> <p>17 A. I have a limited understanding that</p> <p>18 the defense contends that it did not breach</p> <p>19 its fiduciary duties, either the Oak Hill</p> <p>20 board did not, that the Provident board did</p> <p>21 not. I mean it all comes out pretty clearly</p> <p>22 in the deposition transcripts and in the</p> <p>23 expert reports by Dr. Prowse and Dr. Tuzin.</p> <p>24 Now, maybe there's some expert</p> <p>25 reports on the fiduciary duties or something</p>	<p style="text-align: right;">Page 132</p> <p>1 FUERMAN</p> <p>2 computer data, notes, analysis?</p> <p>3 A. No, no, I do not.</p> <p>4 Q. Did you ever conduct any research</p> <p>5 into OHSL, its demographics, operations,</p> <p>6 history, anything like that?</p> <p>7 MR. BRAUTIGAM: Objection.</p> <p>8 Q. OHSL is OHSL Financial Corporation,</p> <p>9 one of the defendants.</p> <p>10 A. Minimal amount of research. A</p> <p>11 couple of press releases I found on Lexus.</p> <p>12 I'm trying to remember if they even had a 10K</p> <p>13 on Lexus.</p> <p>14 It was not a real big company. I'm</p> <p>15 not sure if they had a 10K on Lexus. It was a</p> <p>16 fairly small amount of research.</p> <p>17 Q. Do you consider yourself an expert</p> <p>18 on OHSL or what it was facing in either the</p> <p>19 securities markets or the savings and loan</p> <p>20 markets in Ohio in 1999?</p> <p>21 MR. BRAUTIGAM: Objection.</p> <p>22 A. I do not consider myself an expert</p> <p>23 on that topic. Other than just anyone who</p> <p>24 reads the general financial press knows that</p> <p>25 there has been a general consolidation in the</p>
<p style="text-align: right;">Page 131</p> <p>1 FUERMAN</p> <p>2 that I have not looked at but, again, there's</p> <p>3 a lot of stuff to agree with.</p> <p>4 Q. That I agree with. You refer to a</p> <p>5 number of deposition transcripts on this page.</p> <p>6 Did you read those transcripts in full or just</p> <p>7 excerpts?</p> <p>8 A. The whole thing.</p> <p>9 Q. Of all of them?</p> <p>10 A. Let me make sure. I skimmed the</p> <p>11 ones that are prior to the restatement, but I</p> <p>12 read very carefully the ones after the</p> <p>13 restatement. For example, I skimmed the depo</p> <p>14 of Joe Stager, January 16, 2002, but read very</p> <p>15 carefully the May 7, 2004 deposition of</p> <p>16 Joe Stager.</p> <p>17 Q. As you sit here today have you</p> <p>18 prepared any demonstrative charts or diagrams</p> <p>19 to demonstrate your opinion, other than the</p> <p>20 ones attached to your report?</p> <p>21 A. I have not, but I specifically</p> <p>22 reserved right to do so in my expert report.</p> <p>23 Q. Other than the background documents</p> <p>24 we've talked about earlier today that you</p> <p>25 brought with you, do you have any other</p>	<p style="text-align: right;">Page 133</p> <p>1 FUERMAN</p> <p>2 financial services industry; little banks</p> <p>3 being merged into big banks over the past</p> <p>4 generation.</p> <p>5 MR. BURKE: Let's go off the record</p> <p>6 for a second.</p> <p>7 (Discussion off the record.)</p> <p>8 Q. Professor Fuerman, other than the</p> <p>9 APB 20 and the other specific materials you</p> <p>10 cite in your report, were there any treatises,</p> <p>11 generally accepted publications in your field</p> <p>12 of expertise that were relevant to the work</p> <p>13 you performed?</p> <p>14 A. Yes.</p> <p>15 Q. What were they?</p> <p>16 A. To refresh my memory I need to look</p> <p>17 at the time sheet. At the beginning of my</p> <p>18 involvement in this case --</p> <p>19 MR. BURKE: Let's go off the record</p> <p>20 for one second.</p> <p>21 (Fuerman Exhibit 5, document, marked</p> <p>22 for identification, as of this date.)</p> <p>23 Q. Take a look at Fuerman Exhibit 5 and</p> <p>24 if you would identify that for the record,</p> <p>25 Dr. Fuerman.</p>

34 (Pages 130 to 133)

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2 A. Okay. This is a time sheet of my

3 time spent working on this case and billings

4 to Mesh and Associates. I wanted to look at

5 this to see some of the things that I read.

6 There are two treatises, one the Miller GAAP

7 guide and the other the Wiley, W-I-L-E-Y, GAAP

8 guide, G-A-A-P. I consolidated them to get a

9 better understanding of APB No. 20.

10 These treatises are important

11 because they will indicate whether an APB that

12 was issued is still in its original form,

13 good, a good accounting standard or whether

14 it's been modified in subsequent years. The

15 bottom line is I determined that it's really

16 not been modified in any meaningful way that

17 has an impact on this case.

18 Q. When you began your work on this

19 case, was it necessary -- I'm sorry.

20 A. I'm sorry. In doing this case there

21 is a specific way that accounting research is

22 performed, and I felt myself to be bound by

23 that. First you look to see if there are any

24 FASB statements and interpretations. There

25 were none that were on point.

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2 Q. Let me stop you. We're going to get

3 into what's in your report. My question right

4 now goes to treatises.

5 A. Journal articles?

6 Q. Journal articles or publications not

7 reflected in your report.

8 A. Oh, not reflected in the report.

9 Q. Yes, that were important.

10 A. Probably what I've just related to

11 you on the time sheet is it, I think.

12 Q. So at the start of your work on this

13 case you looked at a couple of GAAP guides to

14 discuss APB points?

15 A. I'm sorry, I'm stepping on your

16 question. I may have even asked a couple

17 other faculty what their understanding was.

18 Q. I take it at the time you began your

19 work on this case you had not worked with APB

20 20 recently?

21 A. Not as an expert witness, but I've

22 worked on it continuously since I began my

23 dissertation back in 1994. APB No. 20, since

24 I was the first researcher who had to

25 interpret APB No. 20, how to implement it in

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2 research, empirical research, I had to make a

3 lot of -- I had to develop the initial

4 conclusions about what is a restatement and

5 what is not for purposes of the academic

6 research, which is pretty much the same as the

7 understanding of what people in the financial

8 press say when they say what's a restatement.

9 Technically a restatement can cover

10 more situations than what the financial press

11 discusses. I had to work that out in my

12 research. I had to carefully determine that.

13 Q. Notwithstanding I think what you

14 said is your continuing focus on APB 20 in

15 your career, you had to go back and check to

16 see whether it was even still authoritative

17 when you began your work; is that right?

18 MR. BRAUTIGAM: Objection.

19 A. Well, yes. I mean, it is one of the

20 older accounting standards from 1970. One of

21 the accounting bodies, I can't remember if

22 it's the Emerging Issues Tasks Force or

23 another one is holding discussions and have

24 circulated exposure drafts considering

25 revising it and replacing it with a new

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2 standard.

3 Q. Has any such revised standard been

4 adopted?

5 A. No.

6 Q. Other than the two sources you just

7 identified, is there anything else in terms of

8 treatises, journals, publications in your

9 field of expertise that were relevant to your

10 report other than what's already cited in your

11 report, which we'll get to?

12 A. I don't think so, but just in the

13 last two minutes I've come up with two or

14 three things that I had not thought of. For

15 example, the consideration of the possible

16 revision of APB No. 20 at some time in the

17 future, the Miller GAAP guide, the Wiley GAAP

18 guide.

19 Q. That's fine.

20 A. Maybe this afternoon I'll think of

21 additional things.

22 Q. If you do that's fine. Feel free to

23 supplement.

24 MR. BURKE: Let's break now for

25 lunch and see you at one o'clock.

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 FUERMAN</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:17 p.m.)</p> <p>4 ROSS FUERMAN, resumed and testified</p> <p>5 as follows:</p> <p>6 EXAMINATION BY (Cont'd.)</p> <p>7 MR. BURKE:</p> <p>8 Q. Professor Fuerman, what I'd like to</p> <p>9 do is take a look at Plaintiffs' Exhibit 115.</p> <p>10 We've talked about that at various times</p> <p>11 already today. I'd like to go through that a</p> <p>12 little bit, if I could and ask you some</p> <p>13 questions about that.</p> <p>14 A. Please do.</p> <p>15 MR. BURKE: Off the record.</p> <p>16 (Discussion off the record.)</p> <p>17 Q. Page 1 of your report, paragraph</p> <p>18 two.</p> <p>19 A. Yes.</p> <p>20 Q. You say -- that sentence reads "As</p> <p>21 an expert on financial reporting related to</p> <p>22 securities fraud litigation, especially</p> <p>23 restatements." Do you see that language?</p> <p>24 A. Yes.</p> <p>25 Q. I'm correct, am I not, that you do</p>	<p style="text-align: right;">Page 140</p> <p>1 FUERMAN</p> <p>2 Q. You've never taken a deposition of</p> <p>3 any kind, as a direct questioner?</p> <p>4 A. That is correct.</p> <p>5 MR. BRAUTIGAM: Objection, asked and</p> <p>6 answered.</p> <p>7 Q. And you've never litigated a</p> <p>8 securities fraud case?</p> <p>9 MR. BRAUTIGAM: Same objection.</p> <p>10 Q. As Plaintiffs' or defense counsel?</p> <p>11 MR. BRAUTIGAM: Objection.</p> <p>12 A. I've participated in the work to</p> <p>13 litigate a securities fraud case. I've never</p> <p>14 been in charge of it, never had the number one</p> <p>15 responsibility for such a case.</p> <p>16 Q. Maybe I'm misunderstanding. I'm</p> <p>17 trying to doubleback to a point you made</p> <p>18 earlier when we were talking about fraud on</p> <p>19 the market. I thought, I may be wrong,</p> <p>20 correct me if I am, you said I'm not an expert</p> <p>21 in securities litigation?</p> <p>22 A. Let me phrase it this way. There</p> <p>23 are two meanings to the term "expert in</p> <p>24 securities fraud litigation." One is do I</p> <p>25 consider myself competent to lead the defense</p>
<p style="text-align: right;">Page 139</p> <p>1 FUERMAN</p> <p>2 not hold yourself out as an expert on</p> <p>3 securities fraud litigation; is that correct?</p> <p>4 A. I do not hold myself out as an</p> <p>5 expert on how to litigate these cases, but I</p> <p>6 hold myself out as an expert in researching</p> <p>7 these cases.</p> <p>8 Q. But in terms of how these cases are</p> <p>9 handled, strategic decisions, legal issues as</p> <p>10 it relates to litigation, you were not an</p> <p>11 expert on that; is that right?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. On the individual case I am not an</p> <p>14 expert, but the nature of my research is to</p> <p>15 look at very large numbers, hundreds of cases</p> <p>16 in the aggregate and then draw inferences as</p> <p>17 to the legal strategies of the parties, that's</p> <p>18 one of the things that I discussed about in my</p> <p>19 papers.</p> <p>20 Q. Maybe I just want to make sure we</p> <p>21 nail this down.</p> <p>22 A. Certainly.</p> <p>23 Q. You've never tried a case on your</p> <p>24 own of any kind?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 141</p> <p>1 FUERMAN</p> <p>2 or lead the Plaintiffs' side in such a</p> <p>3 lawsuit, no, no way. I would never take on</p> <p>4 such responsibility.</p> <p>5 Do I feel myself an expert in</p> <p>6 writing about these cases in the aggregate, I</p> <p>7 write about these cases in the aggregate, as</p> <p>8 do other people who I cite here, and I feel</p> <p>9 that I am an expert in that sense.</p> <p>10 Q. Because you read about cases and</p> <p>11 write about them?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. And because I read about them and I</p> <p>14 write about them and I dig up data and run</p> <p>15 statistical analysis on them, that's why I</p> <p>16 feel myself to be an expert on, yes.</p> <p>17 Q. I also want to confirm one other</p> <p>18 thing we talked about earlier. You mentioned</p> <p>19 two individuals who you spoke to, who told you</p> <p>20 that in restatement cases the parties usually</p> <p>21 stipulate to materiality?</p> <p>22 A. That is correct.</p> <p>23 Q. I take it that you never</p> <p>24 independently confirmed, substantiated or</p> <p>25 verified that statement as it relates to</p>

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2 specific cases?

3 MR. BRAUTIGAM: Objection.

4 A. As to specific cases, no. I did not

5 ask them about specific cases. I asked them

6 or they may have even volunteered in passing

7 that the posture of defense in this case is

8 unusual from their experience.

9 Q. But in terms of whether -- they

10 related that to you, but you have no

11 first-hand knowledge or experience one way or

12 the other with respect to that; is that

13 correct?

14 MR. BRAUTIGAM: Objection.

15 A. I disagree with that. The opinions

16 of these two people, and there may have been

17 others that I can't remember at this point, is

18 not what made up my mind. It simply confirmed

19 what I already had come to believe from

20 reading APB No. 20, that the position of the

21 defendants with regard to materiality of the

22 financial that were subsequently restated is

23 unusual and certainly unsupported by

24 APB No. 20.

25 Q. We're not talking about APB No. 20.

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2 A. But that is what I based my opinions

3 on. The discussions I had with a couple

4 individuals is simply chitchat, icing on the

5 cake.

6 Q. Okay.

7 A. I base my -- I never mention them in

8 the report. I base my report on publicly

9 available accounting and auditing standards,

10 journal articles, this kind of thing.

11 Q. My point though is you never

12 verified, substantiated or confirmed the

13 validity or invalidity of that chitchat,

14 correct?

15 MR. BRAUTIGAM: Objection.

16 A. No. But, also, I have been working

17 on researching since 1994. Hundreds, no let

18 me correct myself, thousands of securities

19 litigations, not all of them alleging fraud.

20 Some, yes, some no. Actually not all of them

21 private securities class action.

22 Some of them SEC enforcement actions

23 or justice department prosecutions. I would

24 think that since I have been working

25 diligently, especially in the restatements

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2 area, that if it were the case that defendants

3 actually were protesting that the originally

4 issued financials were not materially

5 misstated I would have seen that. Because

6 I've seen many, many cases and talked with

7 hundreds of attorneys, both plaintiffs and

8 defense.

9 There's solid agreement among them,

10 the general notion that if you are a defense

11 counselor and you are defending a C.P.A. firm,

12 oh, my God the financials got restated. That

13 opens the door to greater legal liability for

14 the C.P.A. firm.

15 Q. Okay.

16 A. This is the nature of the research.

17 Q. In all those cases, in all that

18 experience you just described, can you cite me

19 to one instance, one specific instance where

20 the parties stipulated to materiality? That's

21 my question.

22 MR. BRAUTIGAM: Objection.

23 Q. Any instance, yes or no?

24 A. I cannot do that. I would have to

25 go and look at my research database. If you

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2 wish, I'm sure I can dig up a case or two.

3 Q. As you sit here today you can't give

4 me any example of that; is that right?

5 MR. BRAUTIGAM: Objection.

6 A. That's what I said.

7 MR. BRAUTIGAM: Jim, do we have

8 Jason on the phone or not?

9 MR. BURKE: Jason, are you on the

10 phone? Maybe not. Jason? He may be

11 here, he may not be here.

12 Q. Okay. Back to page 1 of your

13 report, paragraph 4. You indicate you are

14 being compensated at the rate of \$150 per

15 hour; that's still correct?

16 A. That is correct for my research and

17 writing, but not for my deposition.

18 Q. What is your rate for your

19 deposition?

20 A. \$300 per hour.

21 Q. That is also your rate if you

22 testify at trial?

23 A. Yes.

24 Q. Paragraph five of your report, the

25 third sentence states, "I was asked to give an

<p style="text-align: right;">Page 146</p> <p>1 FUERMAN</p> <p>2 opinion as an expert in financial accounting</p> <p>3 on the materiality of these misstatements to</p> <p>4 persons who may have relied on the PFGI</p> <p>5 financial statements." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Define for me, if you would, the</p> <p>8 basis for who you define as persons who may</p> <p>9 have relied on the PFGI financial statements?</p> <p>10 MR. BRAUTIGAM: Objection to the</p> <p>11 form.</p> <p>12 Q. I'm trying to understand the meaning</p> <p>13 of that phrase.</p> <p>14 A. The meaning of the phrase is</p> <p>15 starting from the notion of whenever a company</p> <p>16 issues financial statements, under financial</p> <p>17 accounting not managerial accounting, under</p> <p>18 financial accounting the whole reason is that</p> <p>19 so people outside the company can read them</p> <p>20 and rely on them to know what's going on</p> <p>21 financially within the company.</p> <p>22 That's what I meant. I did not mean</p> <p>23 to infer anything about specific reliance TO</p> <p>24 specific people or fraud on the market or this</p> <p>25 or that. That's going beyond what was going</p>	<p style="text-align: right;">Page 148</p> <p>1 FUERMAN</p> <p>2 A. The level of sophistication among</p> <p>3 the different users of the financial</p> <p>4 statements may vary?</p> <p>5 Q. Yes, sir.</p> <p>6 A. That's the basic axiom of the</p> <p>7 financial accounting literature, is to try to</p> <p>8 develop financial statements that meet the</p> <p>9 needs of the diverse group of users of the</p> <p>10 financial statements.</p> <p>11 Q. Okay. Take a look at page 3 of your</p> <p>12 report, if you would. Paragraph eight states,</p> <p>13 "Users of a corporation's financial reporting</p> <p>14 attach greater credibility to a corporation's</p> <p>15 audited annual financial statements because an</p> <p>16 audit is the highest form of assurance that a</p> <p>17 C.P.A. firm can provide that the corporation's</p> <p>18 annual statements are correct." Do you see</p> <p>19 that?</p> <p>20 A. Yes, materially correct.</p> <p>21 Q. It doesn't say that, does it?</p> <p>22 A. Well, then I meant materially</p> <p>23 correct. Maybe I decided it was like the</p> <p>24 Department of Redundancy department to use the</p> <p>25 word "materially" in three sentences in a row.</p>
<p style="text-align: right;">Page 147</p> <p>1 FUERMAN</p> <p>2 through my head.</p> <p>3 Q. Okay. That's my question. I</p> <p>4 appreciate the clarification. So in terms of</p> <p>5 individual's specific reliance on any of the</p> <p>6 financial statements, that's not something</p> <p>7 that you directly addressed in your opinion;</p> <p>8 is that correct, am I understanding you</p> <p>9 correctly?</p> <p>10 A. Let's say we were all shareholders,</p> <p>11 whether this shareholder is relying, but this</p> <p>12 one is not?</p> <p>13 Q. Yes, sir.</p> <p>14 A. No. I mean it's just the general</p> <p>15 concept that I'm talking about in paragraph</p> <p>16 five, the general concept when financial</p> <p>17 statements are issued the whole purpose is so</p> <p>18 that people outside the company can read them,</p> <p>19 use them, rely on them. That's the concept.</p> <p>20 Q. Obviously the level of financial</p> <p>21 sophistication varies widely between</p> <p>22 individuals who may be shareholders in a</p> <p>23 corporation, correct?</p> <p>24 MR. BRAUTIGAM: Objection.</p> <p>25 Q. Is that generally true?</p>	<p style="text-align: right;">Page 149</p> <p>1 FUERMAN</p> <p>2 Q. But your statement here states that</p> <p>3 "An audit is the highest form of assurance</p> <p>4 that a C.P.A. firm can provide that a</p> <p>5 corporation's financial statements are</p> <p>6 correct." We admit that's not the standard,</p> <p>7 do we not?</p> <p>8 A. Obviously very clearly it's GAAP</p> <p>9 that they be materially correct.</p> <p>10 Q. So the word "materially" was left</p> <p>11 out of that sentence?</p> <p>12 A. The word "materially" was</p> <p>13 inadvertently left out of that sentence.</p> <p>14 Q. Is "materially correct" the</p> <p>15 phraseology that is ordinarily used in audit</p> <p>16 opinions?</p> <p>17 A. No, I'd have to review my auditing</p> <p>18 textbook. I think it's more along the lines</p> <p>19 of the auditor gives an opinion, something</p> <p>20 along the lines of, in our opinion our audits</p> <p>21 provide reasonable assurance that the</p> <p>22 financials are materially fairly stated or</p> <p>23 something like that. I'd have to go and</p> <p>24 review my auditing textbook, but the word</p> <p>25 "materially" is definitely in there, almost</p>

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<p style="text-align: right;">Page 150</p> <p>1 FUERMAN</p> <p>2 positive.</p> <p>3 Q. As you sit here today you don't even</p> <p>4 recall what the exact terminology that's used</p> <p>5 in audit opinions, as it relates to what the</p> <p>6 opinion is on financial statements; is that</p> <p>7 correct?</p> <p>8 MR. BRAUTIGAM: Objection.</p> <p>9 A. I used to have that memorized. I</p> <p>10 had to memorize that before I took and passed</p> <p>11 the Ohio C.P.A. exam. What is more important</p> <p>12 I think is that I understand the general</p> <p>13 concept, which is that the financials need to</p> <p>14 be materially correct or materially stated,</p> <p>15 fairly stated, and that I do.</p> <p>16 Q. The final sentence, pardon me, the</p> <p>17 final two sentences of that paragraph eight,</p> <p>18 the first one states, "It is a violation of</p> <p>19 auditing standards to issue an unqualified</p> <p>20 audited opinion if the financial statements</p> <p>21 are materially misstated."</p> <p>22 A. Yes, I wrote that.</p> <p>23 Q. What is the basis for that, what's</p> <p>24 your support for that?</p> <p>25 A. Volumes and volumes of auditing</p>	<p style="text-align: right;">Page 152</p> <p>1 FUERMAN</p> <p>2 you are looking for it.</p> <p>3 A. There are more complex things that</p> <p>4 accountants and auditors argue about. This is</p> <p>5 just not one of them.</p> <p>6 Q. My question though is, have you ever</p> <p>7 done any research or conducted any kind of a</p> <p>8 study or an analysis that substantiates this</p> <p>9 statement?</p> <p>10 A. Actually now that I think about it,</p> <p>11 I have in this sense. In my resume I cite an</p> <p>12 article. It's Exhibit A to this Plaintiffs'</p> <p>13 Exhibit 115. If you go to the second page,</p> <p>14 the third article, the role of auditor</p> <p>15 culpability.</p> <p>16 Q. This is the third page?</p> <p>17 A. No, excuse me. The second page of</p> <p>18 my resume, the third article listed from the</p> <p>19 top. The third is role of auditor</p> <p>20 culpability.</p> <p>21 Q. Okay.</p> <p>22 A. In that article I showed evidence --</p> <p>23 Q. Hang on for one second. I'm looking</p> <p>24 at Plaintiffs' Exhibit 115, August 8, 2004.</p> <p>25 Page 1 of Exhibit A ends up down at the bottom</p>
<p style="text-align: right;">Page 151</p> <p>1 FUERMAN</p> <p>2 standards. They all are based on that</p> <p>3 assumption. It's probably stated in several</p> <p>4 of the standards. Probably SAS number 58 if I</p> <p>5 recall.</p> <p>6 Q. The first sentence we talked about</p> <p>7 in paragraph eight, page 3 of Plaintiffs'</p> <p>8 Exhibit 115, what's the basis for the support</p> <p>9 for that statement, that "Users attach greater</p> <p>10 credibility to annual financial statements"?</p> <p>11 What's the empirical support for that?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. Again, it's an axiom of the</p> <p>14 accounting and auditing literature that this</p> <p>15 is true. There probably are research papers</p> <p>16 that have been focused on that topic. None of</p> <p>17 them come to mind.</p> <p>18 You are asking questions about</p> <p>19 things that are such fundamental axioms that</p> <p>20 most researchers don't bother researching.</p> <p>21 Because it's part of -- it would be like</p> <p>22 asking in a course in Jewish law, you know,</p> <p>23 what are the Ten Commandments. Everybody</p> <p>24 knows what they are.</p> <p>25 Q. I can give you a cite for that if</p>	<p style="text-align: right;">Page 153</p> <p>1 FUERMAN</p> <p>2 with HTTP?</p> <p>3 MR. BRAUTIGAM: Second page of</p> <p>4 Exhibit A.</p> <p>5 MR. BURKE: I understand.</p> <p>6 Q. You are saying number three?</p> <p>7 A. Right.</p> <p>8 Q. The thing I'm looking at, it says</p> <p>9 the effective reform act and central bank on</p> <p>10 naming auditor defendants.</p> <p>11 MR. BRAUTIGAM: No, that's the</p> <p>12 fourth one.</p> <p>13 A. It could be we are both right. The</p> <p>14 resume may have changed from one date to the</p> <p>15 next. Maybe I got an additional article</p> <p>16 published.</p> <p>17 MR. BURKE: I think this is the one</p> <p>18 you marked.</p> <p>19 Q. Is your's correct, the one you are</p> <p>20 looking at correct?</p> <p>21 A. I think so. I'm publishing new</p> <p>22 articles all the time. The most recent</p> <p>23 publications are not reflected here.</p> <p>24 Q. Okay.</p> <p>25 A. Anyway, in the article that starts</p>

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2 off "The role of auditor culpability in naming

3 auditor defendants," in there I show that the

4 litigants, specifically the plaintiffs in

5 private securities class actions, regard the

6 restatement of audited -- previously issued

7 audited financial statements completely

8 differently than the restatement of previously

9 issued unaudited quarterly financial

10 statements in regard to naming the auditor

11 defendant.

12 There's a very strong relationship

13 naming the auditor defendant if it's audited

14 annual financial statements. There's no

15 relationship at all if it's just quarterlies.

16 This is kind of intuitive, but I was the first

17 one to show this among academic researchers.

18 Q. You believe that substantiates your

19 statement here that corporation's financial

20 reporting creates greater credibility to an

21 audited annual statement than other

22 statements; is that correct?

23 A. That's one. Another is there have

24 been a bunch of -- as we talk here other

25 papers come to mind. In the wake of the

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1 FUERMAN

2 Arthur Anderson meltdown a number of

3 researchers did studies that showed that in

4 the aggregate companies that were audited by

5 Arthur Anderson took a beating in the stock

6 market, compared to companies that were

7 audited by other members of the big four.

8 Because in the aggregate in

9 investors felt that the audit of Anderson

10 could not be trusted to enhance the

11 credibility of those companies financial

12 statements and those companies stocks, in turn

13 compared to PricewaterhouseCoopers, KPMG,

14 Ernst and Young, Deloitte and Tush.

15 Q. That deals with one auditing firm

16 versus another?

17 A. One auditing firm whose

18 representation for being a high quality

19 auditor had been impugned, the other firm

20 their reputation had not been impugned. That

21 shows that it matters to the investment

22 community the audit that's performed. It's

23 not just parts is parts.

24 It matters a lot. By extension,

25 audited annual financial statements are more

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2 to be trusted than unaudited quarterly

3 financial statements.

4 Q. Can you point me, other than what

5 you've told me about already, if this is so

6 axiomatic, to any accounting literature,

7 publication, article, treatises or anything

8 that says that?

9 A. I can think of another one.

10 Q. Can you think of any authoritative

11 treatises, standard, bulletin or anything else

12 that says that?

13 A. In the words you use, no. But the

14 concepts you are expressing are support for

15 that notion that audited annual financials are

16 more important to users of financial

17 statements or more believable or more

18 credible.

19 That's about as -- there are many

20 articles that touch on that. The auditing

21 textbook I use I'm almost positive, by

22 William Messier, says that. The whole purpose

23 of audits is to enhance the credibility of

24 financial statements.

25 Q. The last sentence in paragraph eight

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2 states that conversely an auditor who issues

3 an unqualified audit opinion when the

4 financial statements are immaterially

5 misstated is in full compliance with auditing

6 standards?

7 A. That is correct.

8 Q. What is immaterially misstated mean?

9 A. It would be a misstatement that is

10 not regarded as material. The auditor is only

11 responsible for providing reasonable assurance

12 that financials are materially correct.

13 That's all. To do more would be an

14 unreasonable expectation to make of the

15 auditor.

16 Q. Is it your testimony that an auditor

17 who issues an opinion when he knows the

18 financial statements are misstated is in full

19 compliance with auditing standards?

20 A. If he knows or she knows they are

21 immaterially misstated he or she is in full

22 compliance, however, I must clarify that. How

23 this comes up in auditing is frequently

24 auditors when they are auditing the books of a

25 company, they find adjustments that

<p style="text-align: right;">Page 158</p> <p>1 FUERMAN</p> <p>2 potentially ought to be made to the accounts</p> <p>3 that underline the financial statements of the</p> <p>4 company, and the question is, should it</p> <p>5 require them to be made.</p> <p>6 The auditing standards say no, not</p> <p>7 unless they are material. The reason for this</p> <p>8 is because, one, the auditor should not</p> <p>9 attempt to go beyond assuring materially</p> <p>10 correct financial statements. And the other</p> <p>11 is the process of auditing is a spot check.</p> <p>12 The auditor, much of the work of the</p> <p>13 auditor is gathering relatively small samples</p> <p>14 of very large numbers of transactions and</p> <p>15 using inferential statistics to decide whether</p> <p>16 those accounts, those line items are correct</p> <p>17 or incorrect.</p> <p>18 It can quite conceivably occur that</p> <p>19 the auditor concludes from inferential</p> <p>20 statistics that they are misstated and be</p> <p>21 wrong, because I'm not sure -- am I speaking</p> <p>22 too abstractly? Inferential statistics, what</p> <p>23 that is, is when you don't look at the entire</p> <p>24 population, but you take a small sample and</p> <p>25 you estimate from that what the entire</p>	<p style="text-align: right;">Page 160</p> <p>1 FUERMAN</p> <p>2 A. I've taught that to many students.</p> <p>3 Q. That's not my question. You've</p> <p>4 never done it?</p> <p>5 MR. BRAUTIGAM: Objection.</p> <p>6 A. I've never performed a financial</p> <p>7 statement audit, that is correct.</p> <p>8 Q. Paragraph nine. I think we were</p> <p>9 talking in general about the proxy statement</p> <p>10 prospectus, dated September 27, 1999; is that</p> <p>11 correct?</p> <p>12 MR. BRAUTIGAM: Actually I think</p> <p>13 it's dated September 24th.</p> <p>14 A. Where are we right now?</p> <p>15 Q. Second line of paragraph 7 of your</p> <p>16 report there. You refer to the proxy</p> <p>17 statement prospectus filed September 27, 1999?</p> <p>18 A. Yes.</p> <p>19 Q. Is that correct or is Mr. Brautigam</p> <p>20 right that it's September 24th?</p> <p>21 A. I could be wrong on that. Sometimes</p> <p>22 it's confusing. When you look at Lexus Nexus</p> <p>23 sometimes the date you think is the date you</p> <p>24 are looking at, the document date sometimes is</p> <p>25 the date filed with the SEC.</p>
<p style="text-align: right;">Page 159</p> <p>1 FUERMAN</p> <p>2 population looks like.</p> <p>3 Gallop does that when it does polls</p> <p>4 to see how it predicts how people will vote in</p> <p>5 an election. The auditor does the same thing</p> <p>6 during an audit. That's the other reason why</p> <p>7 unless it really looks like the companies line</p> <p>8 item is materially misstated the auditor</p> <p>9 should not insist that an adjustment be made.</p> <p>10 Q. You have never personally been</p> <p>11 involved in that process that you just</p> <p>12 described, because you never participated in</p> <p>13 actual auditing of financial statements,</p> <p>14 correct?</p> <p>15 MR. BRAUTIGAM: Objection.</p> <p>16 A. It is corrective, I've not</p> <p>17 participated in an audit. I've participated</p> <p>18 in teaching auditing students for the last ten</p> <p>19 years though.</p> <p>20 Q. But this whole analysis you just</p> <p>21 talked about of testing and inferential</p> <p>22 statistics and deciding whether the testing</p> <p>23 indicates something or doesn't indicate,</p> <p>24 you've never done that yourself, have you?</p> <p>25 MR. BRAUTIGAM: Objection.</p>	<p style="text-align: right;">Page 161</p> <p>1 FUERMAN</p> <p>2 Q. So Mr. Brautigam shouldn't of</p> <p>3 interrupted and corrected me; is that right?</p> <p>4 I'm being facetious. In any event, here in</p> <p>5 these paragraphs we're talking about the proxy</p> <p>6 statement for the OHSL Provident merger, are</p> <p>7 we not?</p> <p>8 A. Yes.</p> <p>9 Q. Paragraph nine states that "Thus</p> <p>10 with regard to financial reporting, the</p> <p>11 audited annual financial statements for the</p> <p>12 year December 1, 1998 (10K) were the most</p> <p>13 important financial statements for OHSL</p> <p>14 shareholders in evaluating the financial</p> <p>15 condition of prospects of PFGI, as they were</p> <p>16 the most recently audited financial statements</p> <p>17 available prior to their having to make a</p> <p>18 decision on the merger."</p> <p>19 A. Yes, I wrote that.</p> <p>20 Q. I think you indicated earlier you</p> <p>21 did not undertake any analysis of specific</p> <p>22 demographics of the OHSL shareholders, what</p> <p>23 individual shareholders found most important,</p> <p>24 least important or anything like that,</p> <p>25 correct?</p>

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<p style="text-align: right;">Page 162</p> <p>1 FUERMAN</p> <p>2 A. No, I did not call them up on the</p> <p>3 phone and ask them what they felt was most</p> <p>4 interesting or important.</p> <p>5 Q. So what's the basis for your</p> <p>6 statement as to what the OHSL shareholders</p> <p>7 found most important, as you stated in this</p> <p>8 paragraph?</p> <p>9 A. That the basis for my statements in</p> <p>10 the general axiom of the accounting and</p> <p>11 auditing literature, that audited annual</p> <p>12 financial statements are more important than</p> <p>13 quarterly unaudited financial statements.</p> <p>14 Interestingly, there was a proposal at one</p> <p>15 point many years ago that the SEC ought to</p> <p>16 require all financial statements to be</p> <p>17 audited.</p> <p>18 There was the recognition that then</p> <p>19 they would all be equally credible and</p> <p>20 trustworthy, but it was decided on cost</p> <p>21 benefit analysis basis not to require that.</p> <p>22 So because of that only the annual financial</p> <p>23 statements are audited. Logically the annual</p> <p>24 audited financial statements that are</p> <p>25 available to people, blessed ones, that are</p>	<p style="text-align: right;">Page 164</p> <p>1 FUERMAN</p> <p>2 shareholders, did you?</p> <p>3 MR. BRAUTIGAM: Objection to the</p> <p>4 form.</p> <p>5 A. I did study to prepare for this</p> <p>6 expert testimony, the fact pattern of the OHSL</p> <p>7 merger. From that fact pattern I determined</p> <p>8 that the two most important audited annual</p> <p>9 financial statements to consider, so far as</p> <p>10 materiality statements and the nexus between</p> <p>11 them, are year end 1998 and year end 1999.</p> <p>12 Q. Let me ask the question again. Did</p> <p>13 you undertake any study, any analysis, any</p> <p>14 survey of specifically what OHSL shareholders</p> <p>15 did or did not find important or did or did</p> <p>16 not rely upon?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. I did specific analysis to determine</p> <p>19 what was the date of the special -- what was</p> <p>20 the date of the proxy that was set out; what</p> <p>21 was the date of the shareholders meeting; what</p> <p>22 said what at the special shareholders meeting;</p> <p>23 what were the issues that arose around the</p> <p>24 time of the shareholders meeting; what were</p> <p>25 the issues that arose between then and the</p>
<p style="text-align: right;">Page 163</p> <p>1 FUERMAN</p> <p>2 available to people are the most important.</p> <p>3 Q. As to what any individual group,</p> <p>4 subset of OHSL shareholders did or did not</p> <p>5 find important, did or did not rely upon, you</p> <p>6 don't know that specifically, do you?</p> <p>7 MR. BRAUTIGAM: Objection.</p> <p>8 A. I do not know that specifically.</p> <p>9 Q. You are relying on the axiom you</p> <p>10 just described?</p> <p>11 A. I'm relying on the axiom that</p> <p>12 shareholders of any company are going to</p> <p>13 attach the greatest importance in some</p> <p>14 respects to the most recent audited annual</p> <p>15 financial statements.</p> <p>16 Q. That's independent of how they were</p> <p>17 treated in this particular transaction, right?</p> <p>18 MR. BRAUTIGAM: Objection.</p> <p>19 Q. I guess what I'm driving at and I'm</p> <p>20 not trying to argue with you, you didn't</p> <p>21 undertake any analysis, any study, any polling</p> <p>22 or anything else that allows you to conclude,</p> <p>23 other than in general, based upon your general</p> <p>24 axioms, what specifically was relied upon, was</p> <p>25 important or anything else to the OHSL</p>	<p style="text-align: right;">Page 165</p> <p>1 FUERMAN</p> <p>2 closing of the merger on December 3, 1999.</p> <p>3 I looked at all these things in</p> <p>4 determining what was most important for the</p> <p>5 OHSL shareholders to consider.</p> <p>6 Q. Okay. We'll keep going then. What</p> <p>7 OHSL shareholders did you ever talk to?</p> <p>8 A. I didn't talk to any OHSL</p> <p>9 shareholders.</p> <p>10 Q. You didn't read Mr. Thiemann's</p> <p>11 deposition, right?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 Q. Is that right?</p> <p>14 MR. BRAUTIGAM: Objection.</p> <p>15 A. Yes. I have told you previously I</p> <p>16 did not read the depositions of the plaintiffs</p> <p>17 because I felt it would not be worth spending</p> <p>18 time on.</p> <p>19 Q. Did you poll any of the OHSL</p> <p>20 shareholders and conduct any kind of a study</p> <p>21 or analysis of what they looked at, what they</p> <p>22 read or what they relied upon?</p> <p>23 MR. BRAUTIGAM: Objection.</p> <p>24 In my professional opinion it's not</p> <p>25 necessary.</p>

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<p style="text-align: right;">Page 166</p> <p>1 FUERMAN</p> <p>2 Q. Just a simple yes or no, either you</p> <p>3 did or you didn't?</p> <p>4 MR. BRAUTIGAM: Objection.</p> <p>5 Q. I'm not trying to do anything other</p> <p>6 than establish what you did.</p> <p>7 MR. BRAUTIGAM: Dr. Fuerman, you</p> <p>8 have the right to complete your answers.</p> <p>9 It's improper for him to interrupt, so</p> <p>10 proceed accordingly.</p> <p>11 Q. Did you conduct any such poll,</p> <p>12 sensus or any kind of a study of specifically</p> <p>13 what the OHSL shareholders did or did not find</p> <p>14 important and rely upon?</p> <p>15 MR. BRAUTIGAM: Objection.</p> <p>16 A. I did not conduct any poll because I</p> <p>17 did not believe that that was the proper mode</p> <p>18 of analysis on determining what financials are</p> <p>19 most important to these shareholders. Getting</p> <p>20 back, again, to the basic axiom that financial</p> <p>21 accounting is for the purpose of the meeting</p> <p>22 the needs of a diverse group of potential</p> <p>23 users of financial statements.</p> <p>24 They are not specially created for</p> <p>25 creditors versus equity holders versus trade</p>	<p style="text-align: right;">Page 168</p> <p>1 FUERMAN</p> <p>2 you've described them or based upon specific</p> <p>3 investigation, specific analysis of specific</p> <p>4 OHSL shareholders?</p> <p>5 MR. BRAUTIGAM: Objection to form.</p> <p>6 A. The direct answer is neither. It's</p> <p>7 based on the axioms, the general postulants</p> <p>8 and principles and standards of accounting,</p> <p>9 plus specific investigation of the OHSL fact</p> <p>10 pattern. When was the proxy mailed out or</p> <p>11 issued? When was the special meeting of</p> <p>12 shareholders held? When was the merger</p> <p>13 closing?</p> <p>14 Q. Where is that investigation? I</p> <p>15 mean, did you have a document that details</p> <p>16 that investigation that you conducted?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. It's reflected in this report. It</p> <p>19 is not committed to writing.</p> <p>20 Q. So the investigation you just talked</p> <p>21 about is not written down anywhere?</p> <p>22 A. It's written into this report. The</p> <p>23 way I do my reports is I write them and I</p> <p>24 think about them and then I do further</p> <p>25 research. It might be looking at things in</p>
<p style="text-align: right;">Page 167</p> <p>1 FUERMAN</p> <p>2 creditors. They are general purpose for</p> <p>3 everybody external to the corporation. And on</p> <p>4 that basis I conclude that those are the two</p> <p>5 most important audited annual financials to</p> <p>6 consider in determining materiality.</p> <p>7 Q. I'm not disagreeing with you. All I</p> <p>8 want to do is establish whether that is based</p> <p>9 upon your axioms as you've described them or</p> <p>10 based upon any specific investigation and</p> <p>11 specific analysis of specific OHSL</p> <p>12 shareholders?</p> <p>13 MR. BRAUTIGAM: Objection. It's not</p> <p>14 a question, it's a speech. This is asked</p> <p>15 and answered. You are harassing the</p> <p>16 witness.</p> <p>17 Q. Go a head.</p> <p>18 MR. BRAUTIGAM: Wait for a question.</p> <p>19 MR. BURKE: You can read it back.</p> <p>20 MR. BRAUTIGAM: She can read it</p> <p>21 back, but it won't reflect the question.</p> <p>22 MR. BURKE: I'll restate it.</p> <p>23 Q. Professor Fuerman, I understand what</p> <p>24 you've just said. My question is, are those</p> <p>25 conclusions based upon your general axioms as</p>	<p style="text-align: right;">Page 169</p> <p>1 FUERMAN</p> <p>2 various financial statements, reading through</p> <p>3 deposition transcripts and then I go and I</p> <p>4 revise the report. So that's where the</p> <p>5 research gets reflected. There's not a</p> <p>6 separate investigative report.</p> <p>7 Q. Page 4 of your report. This is</p> <p>8 still in paragraph nine. The first full</p> <p>9 sentence on that sentence says "However, the</p> <p>10 unaudited quarterly financial statements for</p> <p>11 the quarters ended March 31, 1999 and June 30,</p> <p>12 1999. The 10Qs also were very important, as</p> <p>13 they were the most recent financial statements</p> <p>14 available, prior to their having to make a</p> <p>15 decision on the merger at or before the</p> <p>16 October 25, 1999 special meeting of OHSL</p> <p>17 stockholders."</p> <p>18 A. Correct, I did write that.</p> <p>19 Q. As you sit here today, do you know</p> <p>20 specifically how the March 31, 1999 and the</p> <p>21 June 30, 1999 PFGI annual financial statements</p> <p>22 individually were impacted as a result of the</p> <p>23 statement?</p> <p>24 MR. BRAUTIGAM: Objection.</p> <p>25 A. I do not know that, but that's not</p>

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<p style="text-align: right;">Page 170</p> <p>1 FUERMAN</p> <p>2 what I said in this sentence, in this</p> <p>3 paragraph. I said that these are the</p> <p>4 quarterly financials that are most logically,</p> <p>5 very important because they are very recent in</p> <p>6 time, prior to the October 25, 1999 special</p> <p>7 meeting of OHSL shareholders.</p> <p>8 Q. But that's not my question, my</p> <p>9 question is the one I asked you. Do you know</p> <p>10 specifically how the March 31, 1999 and the</p> <p>11 June 30, 1999 interim periodic financial</p> <p>12 statements were impacted by the restatements?</p> <p>13 MR. BRAUTIGAM: Objection.</p> <p>14 A. No, I do not. I did read a</p> <p>15 deposition transcript where counsel for</p> <p>16 plaintiffs requested that information from one</p> <p>17 of the defendants and the implication was it</p> <p>18 was not going to be provided to the</p> <p>19 plaintiffs.</p> <p>20 Q. Was not going to be provided or</p> <p>21 couldn't be provided?</p> <p>22 A. Well, it was said that it couldn't</p> <p>23 be provided. But the plaintiffs have no way</p> <p>24 of knowing whether it could or could not be</p> <p>25 provided. All the plaintiffs know is that it</p>	<p style="text-align: right;">Page 172</p> <p>1 FUERMAN</p> <p>2 important as the merger closing occurred</p> <p>3 December 3, 1999." Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. Again, you are referring to the PFGI</p> <p>6 10Q, right?</p> <p>7 A. That's true.</p> <p>8 Q. OHSL shareholders never would have</p> <p>9 gotten 10Qs for PFGI for a date after the</p> <p>10 proxy statement, would they?</p> <p>11 MR. BRAUTIGAM: Objection.</p> <p>12 A. That is correct.</p> <p>13 Q. How were they supposed to figure</p> <p>14 that out?</p> <p>15 A. In doing the analysis of the</p> <p>16 restatement impact it's necessary to use the</p> <p>17 subsequently issued 1999 10K as a rough</p> <p>18 approximation of how much restated those</p> <p>19 quarters ended March 31, '99 and June 30, '99</p> <p>20 and September 30, '99, how badly they were</p> <p>21 restated. That's our only way to gain some</p> <p>22 approximation as to how badly they were</p> <p>23 restated.</p> <p>24 Q. You don't know how restatement</p> <p>25 affected any of those interim quarterly</p>
<p style="text-align: right;">Page 171</p> <p>1 FUERMAN</p> <p>2 was not provided and, therefore, I cannot base</p> <p>3 my analysis of the restatement impact</p> <p>4 comparing reported, originally reported versus</p> <p>5 restated quarters because it wasn't the</p> <p>6 quarters that were restated back then, it was</p> <p>7 just the years.</p> <p>8 Q. As it relates to 1999 the only</p> <p>9 information in the proxy statement were</p> <p>10 quarterly data, were they not?</p> <p>11 A. There was an incorporation by</p> <p>12 reference of the annual financial statements,</p> <p>13 the most recent 10K.</p> <p>14 Q. For 1998?</p> <p>15 A. That is correct.</p> <p>16 Q. So if I'm correct, the 1999 numbers</p> <p>17 the only 1999 numbers included in the proxy</p> <p>18 statement were quarterly numbers, were they</p> <p>19 not?</p> <p>20 A. Those are the only numbers included</p> <p>21 in the proxy statement.</p> <p>22 Q. The next sentence states, "Also the</p> <p>23 unaudited quarterly financial statements for</p> <p>24 the quarter ended September 30, 1999 contended</p> <p>25 the 10Q, filed November 15, 1999 were very</p>	<p style="text-align: right;">Page 173</p> <p>1 FUERMAN</p> <p>2 statements, do you?</p> <p>3 A. I know roughly, logically they would</p> <p>4 have been restated in roughly the same</p> <p>5 percentage as the 10K for years end 12/31/99.</p> <p>6 Q. You know that or you assume that?</p> <p>7 A. I think that's the only assumption</p> <p>8 under the circumstances that any reasonable</p> <p>9 expert could make, when that's the best</p> <p>10 available information that I can use to do my</p> <p>11 extrapolation.</p> <p>12 Q. You don't know how the auto lease</p> <p>13 securitizations were booked, when they were</p> <p>14 booked, how they were closed or how they were</p> <p>15 reflected on Provident's accounting system, do</p> <p>16 you?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. I know roughly how it worked.</p> <p>19 Q. Tell me roughly how it worked as you</p> <p>20 understand it?</p> <p>21 MR. BRAUTIGAM: Objection.</p> <p>22 A. Periodically estimates were made for</p> <p>23 purposes of determining how much revenue, how</p> <p>24 much expense, how much loss, how much gain</p> <p>25 ought to be for every period, and sometime</p>

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<p style="text-align: right;">Page 174</p> <p>1 FUERMAN</p> <p>2 before the end of each period there would be</p> <p>3 accruals made. Because the nature of the</p> <p>4 lease accounting was not simple cash leases,</p> <p>5 but sale leaseback of operating lease, at one</p> <p>6 point and then later direct financing leases.</p> <p>7 Q. My question wasn't clear and I</p> <p>8 apologize. In any particular year, 1999, for</p> <p>9 example, do you know with any specificity how</p> <p>10 and when the leasebacks were closed, booked,</p> <p>11 when they were on the books, when they were</p> <p>12 off the books, when they were reflected on the</p> <p>13 books as auto leases or anything like that in</p> <p>14 terms of timing within 1999?</p> <p>15 MR. BRAUTIGAM: Objection.</p> <p>16 A. I do not know that because that</p> <p>17 information has not been disclosed to the</p> <p>18 plaintiffs.</p> <p>19 Q. Let me stop you right there.</p> <p>20 A. I can change my analysis.</p> <p>21 Q. Are you aware there's been testimony</p> <p>22 in this case that deals with when those</p> <p>23 securitizations were, in fact, closed?</p> <p>24 A. I've read the transcripts. I know</p> <p>25 it's been said some of the accruals were made</p>	<p style="text-align: right;">Page 176</p> <p>1 FUERMAN</p> <p>2 dated November 15, 1999, did not even come out</p> <p>3 until couple months after the proxy statement,</p> <p>4 at about two or three weeks after the annual</p> <p>5 shareholders meeting, correct?</p> <p>6 A. That is correct.</p> <p>7 MR. BRAUTIGAM: Objection. I think</p> <p>8 you meant special shareholder meeting.</p> <p>9 MR. BURKE: Whatever.</p> <p>10 Q. Special shareholder meeting?</p> <p>11 A. That is correct.</p> <p>12 Q. So that could not have been</p> <p>13 disclosed to PFGI or to OHSL shareholders</p> <p>14 either in the proxy statement or the special</p> <p>15 shareholders meeting, correct?</p> <p>16 A. That is correct, however, it could</p> <p>17 have been disclosed prior to the merger</p> <p>18 closing on December 3, 1999.</p> <p>19 Q. You said "Had OHSL shareholders</p> <p>20 known prior to December 3, 1999 that the</p> <p>21 financial statements for the quarter ending</p> <p>22 September 30, 1999 were materially misstated</p> <p>23 then the December 3, 1999 closing would not</p> <p>24 have occurred," okay?</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 175</p> <p>1 FUERMAN</p> <p>2 at yearend, but it's not been stated with any</p> <p>3 specificity how much when, which. I have not</p> <p>4 seen that, any detail anywhere in the</p> <p>5 deposition transcripts by any of the Provident</p> <p>6 executives.</p> <p>7 Q. So as you sit here today you don't</p> <p>8 have any specificity and you don't have any</p> <p>9 ability to opine as to what particular</p> <p>10 quarters would or would not have been affected</p> <p>11 by the restatement or in what amounts as it</p> <p>12 relates to 1999, correct?</p> <p>13 MR. BRAUTIGAM: Objection.</p> <p>14 A. You've asked two questions,</p> <p>15 specificity and ability. Let me answer the</p> <p>16 first question. Do I have all the specificity</p> <p>17 I would like to have to make my analysis, no,</p> <p>18 I do not.</p> <p>19 Do I have any ability to make an</p> <p>20 analysis, yes, I do. We do this all the time.</p> <p>21 In academe, academic research and Provident</p> <p>22 itself made estimates of how its leases were</p> <p>23 going to work out.</p> <p>24 Q. Let's get back to the paragraph we</p> <p>25 were talking about before. The Provident 10Q,</p>	<p style="text-align: right;">Page 177</p> <p>1 FUERMAN</p> <p>2 Q. First of all, what is the basis for</p> <p>3 your statement that the September 30, 1999</p> <p>4 financial statements were materially</p> <p>5 misstated? What's your empirical evidence on</p> <p>6 that?</p> <p>7 MR. BRAUTIGAM: Objection.</p> <p>8 A. My empirical evidence is that the</p> <p>9 12/31/99 10K was materially misstated and the</p> <p>10 12/31/98 10K was materially misstated. For</p> <p>11 the in between quarters to not be materially</p> <p>12 misstated would be mathematically impossible.</p> <p>13 Q. But you have not calculated the</p> <p>14 precise misstatement in any of those in</p> <p>15 between quarters, have you?</p> <p>16 A. I have not because the information</p> <p>17 to enable me to do that has not been provided</p> <p>18 to plaintiffs.</p> <p>19 Q. The next statement reads, "Either</p> <p>20 OHSL and PFGI would have mutually agreed under</p> <p>21 the circumstances not to close or an</p> <p>22 injunction would have prevented the closing."</p> <p>23 Do you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. I think you told me previously that</p>

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<p style="text-align: right;">Page 178</p> <p>1 FUERMAN</p> <p>2 you never participated in a merger transaction</p> <p>3 on behalf of the acquiring company or the</p> <p>4 acquired company?</p> <p>5 A. That is correct.</p> <p>6 Q. What's the basis for your statement</p> <p>7 that if this were the case as you described it</p> <p>8 here these parties would not have closed?</p> <p>9 A. Well, I've just noticed this in my</p> <p>10 thousands of securities litigations in my</p> <p>11 database, that whenever there's an upsetting</p> <p>12 event and a restatement close before a merger</p> <p>13 closing of the acquiring corporation would</p> <p>14 certainly qualify as an upsetting event.</p> <p>15 That causes the deal to be scuttled</p> <p>16 or renegotiated because it's just not any</p> <p>17 longer -- it's no longer the deal that the</p> <p>18 people who previously had agreed to had agreed</p> <p>19 to. The deal has changed.</p> <p>20 Q. Specifically what transactions are</p> <p>21 you talking about?</p> <p>22 A. Well, in general if there's a change</p> <p>23 to the financials for the worse that's going</p> <p>24 to have a negative impact on the stock price</p> <p>25 and this is a stock-for-stock transaction.</p>	<p style="text-align: right;">Page 180</p> <p>1 FUERMAN</p> <p>2 specifics to support that statement.</p> <p>3 MR. BRAUTIGAM: I object to all of</p> <p>4 those questions.</p> <p>5 A. I'm not afraid to give you a site.</p> <p>6 You can look at Bernstein and Wild Financial</p> <p>7 Statement Analysis. The most important thing</p> <p>8 with respect to financial statement analysis,</p> <p>9 with regard to these well-regarded authors,</p> <p>10 this book is in their fifth edition, is</p> <p>11 earnings per share. If suddenly the earnings</p> <p>12 per share of the acquiring corporation takes a</p> <p>13 nose difficult in a stock-for-stock</p> <p>14 transaction, the shareholders of the target</p> <p>15 corporation would have to be retarded not to</p> <p>16 demand an injunction and demand a</p> <p>17 renegotiation for a higher, better price.</p> <p>18 Q. Can you give me an example of a</p> <p>19 merger transaction where that occurred? Give</p> <p>20 me one. You got one? Did you assemble any</p> <p>21 data like that for this case?</p> <p>22 MR. BRAUTIGAM: Objection, compound,</p> <p>23 argumentative, badgering the witness.</p> <p>24 Q. Let me rephrase. Can you give me a</p> <p>25 single example of that occurring in a merger</p>
<p style="text-align: right;">Page 179</p> <p>1 FUERMAN</p> <p>2 Were the information disclosed then the deal</p> <p>3 would need to have been renegotiated to</p> <p>4 reflect the lower amount of stock, the lower</p> <p>5 amount of consideration that the OHSL</p> <p>6 shareholders would get unless the deal were</p> <p>7 renegotiated.</p> <p>8 Because suddenly they are being paid</p> <p>9 in much less valuable stock than they had</p> <p>10 agreed to at the special meeting of October</p> <p>11 25, 1999.</p> <p>12 Q. I understand that subjectively you</p> <p>13 believe that. My question is, what specific</p> <p>14 studies or analysis or situations can you</p> <p>15 point me to where that happened?</p> <p>16 A. Is your question whether -- are you</p> <p>17 questioning whether the shareholders care what</p> <p>18 the financials look like in deciding to tender</p> <p>19 their shares to purchaser corporation?</p> <p>20 Q. It's real simple. What definitive</p> <p>21 data support do you have for the statement</p> <p>22 that "Under these circumstances OHSL and PFGI</p> <p>23 would have mutually agreed under the</p> <p>24 circumstances not to close"? When did you see</p> <p>25 that? When did you study it? Give me</p>	<p style="text-align: right;">Page 181</p> <p>1 FUERMAN</p> <p>2 transaction, what you've just described?</p> <p>3 A. In my research I follow much, much,</p> <p>4 much more closely the cases that allege</p> <p>5 securities fraud in fraud on the market than I</p> <p>6 do the cases that involve mergers and</p> <p>7 acquisitions. A lot of those cases I don't</p> <p>8 follow as closely.</p> <p>9 But in my research over ten years I</p> <p>10 have never seen a single case, and I read</p> <p>11 securities class action alert every single</p> <p>12 week when it was publishing monthly and since</p> <p>13 then I follow all the cases that come out with</p> <p>14 institutional shareholders securities class</p> <p>15 action tracking, I've never seen a single case</p> <p>16 where there was a major upsetting corporate</p> <p>17 event of the acquiring corporation, whether</p> <p>18 it's restatement of financials of the</p> <p>19 acquiring corporation or death of the CEO of</p> <p>20 the acquiring corporation or any major</p> <p>21 upsetting event where the deal went through as</p> <p>22 it was originally scheduled, negotiated to go</p> <p>23 through.</p> <p>24 The target corporation would, the</p> <p>25 shareholders would put up a very major fight</p>

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<p style="text-align: right;">Page 182</p> <p>1 FUERMAN</p> <p>2 to prevent that.</p> <p>3 Q. For instance, can you give me -- if</p> <p>4 you can't that's fine, I'm just asking for a</p> <p>5 specific instance?</p> <p>6 A. I cannot remember a single case</p> <p>7 where an upsetting major corporate event</p> <p>8 occurred like that and the transaction went</p> <p>9 through just the way it had been voted on two</p> <p>10 months earlier.</p> <p>11 Q. Give me an example when it didn't go</p> <p>12 through?</p> <p>13 A. I cannot do that.</p> <p>14 Q. Thank you. The next half of the</p> <p>15 sentence talks about under these circumstances</p> <p>16 an injunction would have prevented the</p> <p>17 closing. Do you see that?</p> <p>18 MR. BRAUTIGAM: Objection. You</p> <p>19 misread that.</p> <p>20 Q. It says "Either OHSL and PFGI would</p> <p>21 have agreed mutually under the circumstances</p> <p>22 not to close, or an injunction would have</p> <p>23 prevented the closing." Did I read that</p> <p>24 correctly?</p> <p>25 MR. BRAUTIGAM: The second time,</p>	<p style="text-align: right;">Page 184</p> <p>1 FUERMAN</p> <p>2 A. That is correct.</p> <p>3 Q. You then cite to a footnote that</p> <p>4 says, "When analyzing the question of Federal</p> <p>5 Law one must rely, to the extent possible, on</p> <p>6 the relevant federal statute, the U.S.</p> <p>7 Constitution and the decision of the U.S.</p> <p>8 Supreme Court."</p> <p>9 A. That is correct.</p> <p>10 Q. What's the basis for that being the</p> <p>11 way federal practitioners analyze questions of</p> <p>12 federal law?</p> <p>13 A. Just the general layman's</p> <p>14 understanding of the most important things are</p> <p>15 the onpoint Federal Statute, the U.S.</p> <p>16 Constitution and the decisions of the U.S.</p> <p>17 Supreme Court, and you cannot start by</p> <p>18 ignoring those and looking to other things.</p> <p>19 You may well find that there is</p> <p>20 nothing whatsoever onpoint so far as the</p> <p>21 Federal Statute, the U.S. Constitution, the</p> <p>22 decisions of the U.S. Supreme Court. But at</p> <p>23 least you have a hierarchy of things that are</p> <p>24 regarded as most authoritative, that you look</p> <p>25 at first in the law, and you have a similar</p>
<p style="text-align: right;">Page 183</p> <p>1 FUERMAN</p> <p>2 yes.</p> <p>3 Q. Have you ever been involved in an</p> <p>4 injunction proceeding in connection with a</p> <p>5 merger transaction?</p> <p>6 A. No, but I've read a lot about them.</p> <p>7 As I indicated by reading securities class</p> <p>8 action alert and securities class action</p> <p>9 tracking and all the cases that get filed.</p> <p>10 Q. How many times do you recall of an</p> <p>11 injunction preventing the closing of a merger</p> <p>12 transaction?</p> <p>13 A. What percent of the time? That's</p> <p>14 hard to say whether it's 10 percent, 20</p> <p>15 percent of the time. My best estimate is that</p> <p>16 it's a minority of the cases where an</p> <p>17 injunction prevents the closing from going</p> <p>18 through.</p> <p>19 Q. Did you compile any kind of a study</p> <p>20 of how many times in a circumstances like this</p> <p>21 an injunction was issued to prevent a closing?</p> <p>22 A. No, I did not.</p> <p>23 Q. Let's turn to paragraph ten. You</p> <p>24 referred to a statement of auditing standards</p> <p>25 or SAS number 69?</p>	<p style="text-align: right;">Page 185</p> <p>1 FUERMAN</p> <p>2 hierarchy in accounting and auditing.</p> <p>3 Q. You may have answered my question.</p> <p>4 You indicated this is sort of a layman's view</p> <p>5 of things, is that what this is intended to?</p> <p>6 A. Right, I'm not opining on the way a</p> <p>7 legal brief should be written.</p> <p>8 Q. You will agree with me that</p> <p>9 decisions of Circuit Courts of Appeals also</p> <p>10 tend to be authoritative within the areas</p> <p>11 affected by that?</p> <p>12 A. Oh, highly authoritative.</p> <p>13 Q. The next page you talk about APB or</p> <p>14 Accounting Principles Board, Opinion</p> <p>15 Number 20.</p> <p>16 A. That's right.</p> <p>17 Q. I think you indicate, in the middle</p> <p>18 of that page, of the GAAP hierarchy, G-A-A-P</p> <p>19 hierarchy as you've described it, the only</p> <p>20 pronouncement that is onpoint with the issues</p> <p>21 relevant to your opinion is APB 20; is that</p> <p>22 correct?</p> <p>23 A. That is correct.</p> <p>24 MR. BURKE: We're up to the</p> <p>25 negligence exhibit here.</p>

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<p style="text-align: right;">Page 186</p> <p>1 FUERMAN</p> <p>2 (Fuerman Exhibit 6, document, marked</p> <p>3 for identification, as of this date.)</p> <p>4 Q. Take a look at that and see if you</p> <p>5 can identify that as being a copy of APB 20.</p> <p>6 A. It is. It's a lot easier to read.</p> <p>7 The particular website you got this from, it</p> <p>8 came out in a pretty tough format to follow.</p> <p>9 I have my own copy of APB 20 that I'd like to</p> <p>10 look at.</p> <p>11 Q. If you'd like to refer to yours</p> <p>12 that's fine. I would like to make sure when</p> <p>13 you are referring to APB 20 I've got the right</p> <p>14 document.</p> <p>15 MR. BRAUTIGAM: Would you like to</p> <p>16 copy that?</p> <p>17 MR. BURKE: No.</p> <p>18 Q. If you want to make that part of the</p> <p>19 record we can identify yours as APB 20 and</p> <p>20 I'll just follow along with this.</p> <p>21 A. Okay.</p> <p>22 Q. So this does appear to be APB 20?</p> <p>23 A. That is correct.</p> <p>24 Q. Page 5 of your report, paragraph 11,</p> <p>25 you begin to describe APB 20; is that correct?</p>	<p style="text-align: right;">Page 188</p> <p>1 FUERMAN</p> <p>2 MR. BRAUTIGAM: That's different</p> <p>3 from ever.</p> <p>4 A. I'm just guesstimating. I'd say</p> <p>5 there's maybe a 30 or 40 percent chance one of</p> <p>6 them was. I didn't work in a lot of publicly</p> <p>7 held companies.</p> <p>8 I'm trying to remember other than</p> <p>9 Cardinal Industries, Inc., who did I work for</p> <p>10 that was a publicly held company. Yeah, that</p> <p>11 would be it. I don't think during the couple</p> <p>12 years I was there -- actually during the time</p> <p>13 I was there I think they only issued one</p> <p>14 financial statement and then they were going</p> <p>15 downhill so badly they couldn't issue the</p> <p>16 next. So the answer is no.</p> <p>17 Q. The last full sentence of section</p> <p>18 eleven there, "Users of financial statements</p> <p>19 value consistency because consistency makes it</p> <p>20 easier to determine whether the company is</p> <p>21 improving or deteriorating with regard to its</p> <p>22 performance."</p> <p>23 A. Yes.</p> <p>24 Q. What's the basis for that?</p> <p>25 A. That's a summarization of what you</p>
<p style="text-align: right;">Page 187</p> <p>1 FUERMAN</p> <p>2 A. That is correct.</p> <p>3 Q. The second sentence there states,</p> <p>4 "Ideally there should be no accounting changes</p> <p>5 from one year to the next because accounting</p> <p>6 changes impair consistency."</p> <p>7 A. Changes is used as a noun in that</p> <p>8 sentence, that's why it's confusing.</p> <p>9 Q. When you worked, and we know you</p> <p>10 have not been involved in public accounting,</p> <p>11 but when you worked at the various corporate</p> <p>12 positions you described, were your employers</p> <p>13 the companies for whom you worked ever</p> <p>14 involved with accounting changes?</p> <p>15 A. They may well have been. APB Option</p> <p>16 Number 20 covers a broad range of accounting</p> <p>17 changes, including a number that are not</p> <p>18 "restatements" of the sort that is thought of</p> <p>19 as "restatements" in the financial press.</p> <p>20 Q. Do you know from your own first-hand</p> <p>21 knowledge whether any of those companies were</p> <p>22 involved with accounting changes or issues</p> <p>23 under APB 20?</p> <p>24 MR. BRAUTIGAM: Ever?</p> <p>25 MR. BURKE: When he was there.</p>	<p style="text-align: right;">Page 189</p> <p>1 FUERMAN</p> <p>2 find in APB 20 and a number of other places in</p> <p>3 the accounting literature.</p> <p>4 Q. If you can, point me to where that</p> <p>5 appears in APB 20.</p> <p>6 A. If you look at paragraph 14 of APB</p> <p>7 20, it says in subparagraph A, "Accounting</p> <p>8 principles should be applied consistently for</p> <p>9 all periods presented in comparative financial</p> <p>10 statements. Using difficult accounting</p> <p>11 principles for similar items in financial</p> <p>12 statements presented for various periods may</p> <p>13 result in misinterpretations of earnings</p> <p>14 trends."</p> <p>15 So and it continues with similar</p> <p>16 kinds of sentiments in the next couple of</p> <p>17 subparagraphs or even next three</p> <p>18 subparagraphs. The idea is that there's a</p> <p>19 conflict between two fundamental goals of</p> <p>20 financial accounting. We would like the</p> <p>21 accounting policy, the accounting treatment,</p> <p>22 to be identical year after year after year.</p> <p>23 That way a user of the financial</p> <p>24 statements can look and see whether earnings</p> <p>25 per share are really getting better or getting</p>

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<p style="text-align: right;">Page 190</p> <p>1 FUERMAN</p> <p>2 worse and to what extent. If you have</p> <p>3 restatements then it confuses the issue of how</p> <p>4 things are proceeding over time. But that</p> <p>5 conflicts with the goal in financial</p> <p>6 accounting of, maybe not artfully stating</p> <p>7 this, but let's account for things correctly.</p> <p>8 If you discover at some point in the</p> <p>9 past they were not accounted for correctly</p> <p>10 maybe we ought to think about restating them.</p> <p>11 So the general -- that general conflict</p> <p>12 between the two goals, consistency versus</p> <p>13 let's get it right, is resolved in APB 20 by</p> <p>14 saying that in some situations we will</p> <p>15 restate, but in others we will not, and then</p> <p>16 they specifically go on.</p> <p>17 Am I talking too long?</p> <p>18 Q. You've answered the question. You</p> <p>19 definitely answered the question and you will</p> <p>20 find out, as Mr. Brautigam can tell you,</p> <p>21 sometimes if you answer the question and wait</p> <p>22 for the next one we'll get through this</p> <p>23 quicker. You answered my question. I</p> <p>24 appreciate your help.</p> <p>25 Paragraph number 12 of your report,</p>	<p style="text-align: right;">Page 192</p> <p>1 FUERMAN</p> <p>2 net income of the period of the change."</p> <p>3 That would be an example of current</p> <p>4 treatment which causes the change to have an</p> <p>5 impact or causes what happened in previous</p> <p>6 years to have an impact only on the current</p> <p>7 year's retained earnings. So current</p> <p>8 treatment there's no impact on prior year's</p> <p>9 income statements.</p> <p>10 Q. Am I correct that the language that</p> <p>11 appears in the first bullet point of paragraph</p> <p>12 12 of your report is your summarization of APB</p> <p>13 20, as opposed to language that appears in APB</p> <p>14 20 verbatim?</p> <p>15 A. I can't say that. This is a pretty</p> <p>16 long -- if I had enough time to spend this</p> <p>17 afternoon digging through here I might find</p> <p>18 those exact words and phrases.</p> <p>19 Q. The bullet points do not have</p> <p>20 citations to specific sections of APB 20?</p> <p>21 A. No, they don't. If it's important</p> <p>22 for the case for me to dig up specifics</p> <p>23 citations I could do that, I believe.</p> <p>24 Q. I'm just trying to make sure I</p> <p>25 understand what in here is your view, as</p>
<p style="text-align: right;">Page 191</p> <p>1 FUERMAN</p> <p>2 Plaintiffs' Exhibit 115. There you talk about</p> <p>3 three methods to disclose accounting changes?</p> <p>4 A. Right.</p> <p>5 Q. The first bullet point refers to</p> <p>6 current treatment of an accounting change?</p> <p>7 A. That is correct.</p> <p>8 Q. Now, this refers to APB paragraph</p> <p>9 38; is that correct? No, I'm sorry. Tell me</p> <p>10 where these three methods of treatment are</p> <p>11 addressed in APB 20?</p> <p>12 A. Let's see. They are not all talked</p> <p>13 about in one place in APB 20. You have to</p> <p>14 pick and pull them out of different places.</p> <p>15 Q. Let's look at the first bullet</p> <p>16 point. It talks about current treatment of</p> <p>17 accounting changes. Where does that come</p> <p>18 from?</p> <p>19 A. An example of the first bullet would</p> <p>20 be paragraph 18 -- no, excuse me, paragraph</p> <p>21 19, subparagraph B. Where it says, "The</p> <p>22 cumulative effect of changing to a new</p> <p>23 accounting principal on the amount of retained</p> <p>24 earnings at the beginning of the period in</p> <p>25 which the change is made should be included in</p>	<p style="text-align: right;">Page 193</p> <p>1 FUERMAN</p> <p>2 opposed to what literally is in the verbiage</p> <p>3 of APB 20. The second bullet point deals with</p> <p>4 perspective treatment of accounting changes?</p> <p>5 A. Right. These are changes that are</p> <p>6 not regarded as terribly important by</p> <p>7 APB No. 20 and what happened in prior years is</p> <p>8 ignored. The fact that in prior years this</p> <p>9 new, different accounting policy is being</p> <p>10 applied, we're just going to ignore the fact</p> <p>11 that it was a different accounting policy, a</p> <p>12 different kind of estimation or computation</p> <p>13 than in prior years, we're just going to</p> <p>14 ignore that.</p> <p>15 Q. Can you give me an example in APB 20</p> <p>16 of that, in one of the sections?</p> <p>17 A. Let's see if I can find that.</p> <p>18 Sometimes there are specific new FASBs that</p> <p>19 are issued where they direct the companies to</p> <p>20 just use prospective treatment, to just in</p> <p>21 future financial statements use this new</p> <p>22 accounting policy, this new way of estimating</p> <p>23 and calculating. I can't find it at this</p> <p>24 point.</p> <p>25 Q. The third bullet point in</p>

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